

NEW YORK POST

JUSTICE OF THE CEASE

By BRUCE GOLDING



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As with other mesalamine-containing products, serious adverse events may occur with Lisdex. Before



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April 27, 2008 --

New York's judges are waging war on Sheldon Silver and the state Legislature.

Judges across the state are engaged in a "rule-book slowdown" and refusing to hear cases involving firms that employ members of the Assembly and Senate, The Post has learned.

The protest follows years of lobbying for a pay raise, which has gotten the state's 1,300 judges nothing but broken promises and a wage that, when adjusted for cost of living, ranks 49th in the nation.

And the angriest jurists are trying to expand the effort by recruiting recalcitrant colleagues in closed-door meetings and e-mails sent across the state.

With titles like "How to Get Our Salary Adjustment," the e-mails have included a "blacklist" - obtained by The Post - naming 50 state legislators who are registered as attorneys and the firms where they are employed.

Banding together to tie up cases from lawmakers' firms was also discussed at an April 8 meeting of New York City judges at Enzo's Restaurant in The Bronx, one judge told The Post. There was no resolution on the plan that day, the source said.

One longtime court insider described the situation as a "rule-book slowdown" against the lawmakers and said the judges were playing "hardball" to try to force their first pay raise since 1999.

"It's reminding the firms that [the judges] have the power," the source said.

A prime target is Assembly Speaker Silver, blamed by many judges for refusing to raise their annual income from \$136,700. That rate dates to 1999, when it went up from \$113,000.

The Manhattan Democrat works for the high-profile firm Weitz & Luxenberg, which specializes in asbestos and personal-injury lawsuits. The firm has about 2,200 cases pending across the state - 77 percent of which have lingered in

the system longer than the court system's 30-month timetable for disposing of cases, according to the Office of Court Administrations Web site.

Two upstate judges told The Post that they recently recused themselves from cases involving Silver's firm because of their anger over the stalled pay raises.

"I think the speaker is a slug," said Cattaraugus County Judge Larry Himelein, a Democrat who said he

couldn't be fair to Silver's firm. "The whole New York state political process is a joke."

Cattaraugus County Judge Michael Nenno, who last year joined three other judges in suing the state for a pay raise, also said he felt "some degree of animosity" toward Silver.

"You're in for a penny, you're in for a pound, so if I wouldn't let the speaker appear before me, I wouldn't let anybody from his firm appear before me," Nenno said.

Silver's spokesman declined to comment.

Under court rules, judges do not have to offer an explanation when they recuse themselves from cases.

But Justice Arthur Schack of Brooklyn Supreme Court - who was part of another pay-raise suit against the state last year - last month issued a lengthy opinion explaining why he had refused to consider a real-estate lawsuit involving a firm that employs state Sen. Craig Johnson (D-Nassau County) and Assemblyman Marc Alessi (D-Suffolk County).

"Thanks to our legislators, like Senator Johnson and Assemblyman Alessi, it appears that our judges are the Rodney Dangerfields of government," he wrote.

The e-mail "blacklist" began circulating in late 2006 and has been expanded and updated since then, several recipients told The Post.

It was sent out again earlier this month.

Oneida County Judge Michael Dwyer and Onondaga County Court Judge Joseph Fahey were instrumental in compiling the list, sources said.

Neither returned a call for comment.

Then-Nassau County Supreme Court Justice Joseph DeMaro - a co-plaintiff with Schack - sent out his own e-mail, according to one report, saying, "Re-check the obituary - you died in the last few days" if you are not angry enough to get off cases where legislators' law firms appear.

Sources said that the recusal effort is much stronger upstate but that its effectiveness was limited because the large number of judges in New York City means cases here can be easily reassigned.

As a result, upstate judges have lashed out at their city colleagues as "wusses," one judge said.

Officially, judges say the recusals are about avoiding any conflict of interest because of the ongoing pay dispute.

But the state Advisory Committee on Judicial Ethics has repeatedly tossed out that rationale.

In opinions submitted last February and in September, the committee said the pay dispute alone, as well as lawsuits by individual judges, were not reason enough for recusal.

A third opinion in December maintained that judges should only recuse themselves if they "genuinely" believe they can't be fair because of the controversy.

But the issue has amped up since April 10, when Chief Justice Judith Kaye sued Silver, Senate Majority Leader Joseph Bruno, Gov. Paterson and the entire Assembly and Senate on behalf of all state judges. Her suit demands a raise to \$169,300, the current salary of federal judges.

The state's administrative judges appealed to the advisory committee after an April 15 meeting at the state Judicial Institute in White Plains seeking a positive ruling on the conflict of interest issue.

Among the other judges who have refused to hear cases involving lawmakers' firms are Rockland County Supreme Court Justice Margaret Garvey, Erie County Supreme Court Justice James Dillon, Erie County Supreme Court Justice Patrick Nemoyer and Erie County Family Court Judge David Brockway. They didn't return calls for comment.

State Sen. John DeFrancisco (R-Syracuse), a lawyer and chairman of the Senate Judiciary Committee, called the e-mail campaign "very troubling" and said the judges' rationale for recusing themselves "doesn't ring true."

"Once they have the raises, does that mean there's no conflict anymore?" he said. "If you only have a conflict when a pay raise is pending, it doesn't make any sense."

One Assembly member who works as a lawyer called the judges who have recused themselves "completely and utterly irresponsible."

"If any legislator tried to use their position or mention their position in a courtroom, they'd be disbarred, and I don't think a judge should be held to any different standard - and maybe should be held to a higher standard," the lawmaker said.

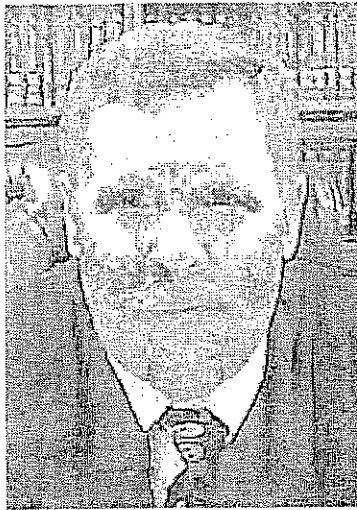
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Some New York judges are flexing their muscle against Assembly Speaker Sheldon Silver and the state government over a pay-raise dispute by:

- Refusing to hear cases brought by law firms where legislators are employed.
- Conducting what one court insider called a "rule book slowdown"
- Distributing an e-mail "blacklist" of legislators names
- Meeting to discuss banding together over the issue



**I think
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slug.**

— Cattaraugus County Judge Larry Himelein, one of the judges who has recused himself from a case brought by Silver's law firm, Weitz & Luxenberg.

Panel stats

State judges' pay-raise
battle by the numbers:

1,300

judges in New York state

21%

pay raise in 1999

\$136,700

in annual salary

\$169,300

pay rate demanded in a
new lawsuit

2,200

active cases from Sheldon
Silver's firm on
the docket

77%

of them have been
pending longer than
court's max time frame

22%

of all other cases pending
are past court time frame

