



Judicial Compensation Commission

Report to the Texas Legislature

October 8, 2010

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Judicial Compensation Commission

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I. Executive Summary

Texas is the second largest state in our nation, in both area and population, and its population is growing rapidly—faster than any other state since at least 2000. The judiciary of a state of the size and stature of Texas must be equipped to handle this growth, both in terms of size of the docket but also in terms of the complexity and importance of the cases needing adjudication.

Many factors contribute to supporting a judiciary that can continue to rise to the challenge of such growth. One of those factors is judicial compensation. In 2007, the Texas Legislature formed the Judicial Compensation Commission (the “Commission”) specifically to look at that factor and, each biennium, recommend the proper salaries to be paid by the state for all justices and judges of the Supreme Court, the Court of Criminal Appeals, the courts of appeals, and the district courts.

Findings and Conclusions

In determining what a “proper” salary would be, the Commission was charged to consider the eight factors provided in Section 35.102(b) of the Texas Government Code (and listed in Section IV of this report). Based on the information it has gathered, the Commission has made the following findings and conclusions:

1. Lawyers choose to be judges not for the money, but, rather, to obtain the particular rewards of this type of public service. The salaries of public servants, including judges, do not and will not match the highest levels of compensation in the private sector. As the statute recognizes, however, **salaries must be set at a level that is adequate to “attract the most highly qualified individuals” to serve as judges “without unreasonable economic hardship” and with “judicial independence unaffected by financial concerns.”**
2. Many highly qualified lawyers view service as a judge as a substantial economic sacrifice. A 2009 State Bar salary survey indicated that the average income of a full-time attorney in private practice was \$166,381, though a significant number of attorneys earned more than that. Further, a 2008 survey of lawyers showed that a majority of those responding (58 percent) were considering being or had definite plans to become a judge, but also showed that a majority of those responding viewed the current salary levels of Texas appellate courts to be too low for them to personally consider becoming judges.

In addition, a survey of salaries received by county court at law judges in Texas reveals that some county-level judges earn more than judges in the state’s appellate courts. A county court at law judge in El Paso earns more than the Chief Justice of the Supreme Court and the Presiding Judge of the Court of Criminal Appeals. A county court at law judge in Hidalgo makes more than a justice on the Supreme Court or judge on the Court of Criminal Appeals. County court at law

judges in Harris, Travis and Tarrant counties make as much as or more than a chief justice on the intermediate appellate courts.

The Commission concludes that **continual evaluation and adjustment of the salaries of judges is important if the state of Texas wishes to continue to attract highly-qualified lawyers to the bench.**

3. One of the most important adjustments is one that will account for the eroding force of inflation. From 1998 to 2005, for example, judicial salaries stayed the same, even as inflation went up 20 percent. Since December 2005, when the last salary adjustment was implemented, inflation increased almost 11 percent. In addition, increases in judicial salaries over the years have been inconsistent and infrequent and, when adjusted, have had to be substantial just to catch up to the cost of living. This unpredictable pattern of adjustments can cause an otherwise adequate salary to become inadequate and financially worrisome. The Commission understands and appreciates the need of the Legislature to control the budget by evaluating the effect of any increases each biennium; therefore, the Commission is making a specific recommendation only for the upcoming biennium. The Commission believes, however, that **anticipating regular adjustments is one of the most important policy goals to be achieved for Texas judicial salaries.**
4. The Legislature and the Governor are to be commended for the adjustments to judicial salaries that occurred in fiscal year 2006. The increases were substantial and went much of the way toward placing the salaries of Texas judges at an appropriate level in comparison to other states. The statute, however, requires the Commission to consider the value of compensable service performed by justices and judges, as determined by reference to judicial compensation in other states. Texas is the second largest state in the country and the fastest growing state. Its dockets contain some of the most complex and important cases in the nation. **In comparison to the nine other most populous states in the nation, however, Texas ranks in the middle and has fallen in the rankings since the Commission's 2008 report.**

Recommendation

As a result of its findings and conclusions, the Commission recommends that salaries of the justices and judges of the Supreme Court, the Court of Criminal Appeals, the 14 courts of appeals, and the district courts be established as shown in **Table 1** for the 2012-2013 biennium:

Table 1: Recommended Judicial Compensation

Judge	State Salary	Additional Compensation	Total	% Increase Above Current Total Compensation
Supreme Court Chief Justice / Court of Criminal Appeals Presiding Judge	\$168,000	n/a	\$168,000	10.2%
Supreme Court Justice / Court of Criminal Appeals Judge	\$163,000	n/a	\$163,000	8.7%
Court of Appeals Chief Justice	\$153,000	up to \$7,500	\$160,500	8.8%
Court of Appeals Justice	\$148,000	up to \$7,500	\$155,500	7.2%
District Court Judge	\$133,000	up to \$15,000	\$148,000	5.7%

Recommended Statutory Changes

The following statutory changes are required to implement the Commission’s salary recommendations:

1. Section 659.012(a)(3) should be amended to provide that a justice of the supreme court, other than the chief justice, and the judges of the court of criminal appeals, other than the presiding judge, are entitled to a salary from the state “that is at least equal to 120% but does not exceed 123%” of the salary of a district judge;
2. Section 659.012 (a)(2) should be amended to provide that a justice of a court of appeals, other than the chief justice, is entitled to a salary from the state “that is at least equal to 110% but does not exceed 113%” of the salary of a district judge;
3. Section 659.012 (a)(1) should be amended to provide that the combined salary of a district judge from state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$7,500 less than the salary provided for a justice of a court of appeals other than a chief justice;
4. Section 659.012 (a)(2) should also be amended to provide that the combined salary of a justice of a court of appeals other than the chief justice from all state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$7,500 less than the salary provided for a justice of the supreme court; and
5. Section 659.012(a)(4) should be amended to increase the supplement for the chief justice or presiding judge of an appellate court to \$5,000 more than the salary of the other justices or judges on the court.

Cost

The fiscal impact to the state of the judicial salary increases recommended by the Commission is estimated to be approximately \$4.7 million per year for judicial salaries for fiscal years 2012 and 2013.¹ There will also be an additional fiscal impact of approximately \$2.8 million per year on the Judicial Retirement System (JRS) Plan I and Plan II for the same time period.²

Table 2 provides more detailed information regarding potential fiscal impacts related to judicial salaries and budget items that are linked to judicial salaries, such as prosecutors' salaries.³

Table 2: Estimated Annual Fiscal Impact

State Judge Salary Increases	\$4,762,000
<i>Highest Courts</i>	\$239,000
<i>Courts of Appeals</i>	\$875,000
<i>District Courts</i>	\$3,648,000
Retirement	\$2,800,000
<i>JRS 1</i>	\$1,800,000
<i>JRS 2</i>	\$1,000,000
District Attorneys	\$1,235,200
County Attorney Supplements	\$273,996
Statutory County Court Judge Salary Supplements ⁴	\$1,108,800

Additional Recommendations

County Salary Supplements: Currently, most intermediate appellate and district court judges receive a county salary supplement. All of the justices of the 14 courts of appeals receive county supplements, and justices of 12 of those courts of appeals receive the maximum allowed by law. Of the district court judges in the state, less than 3 percent do not receive a salary supplement. Seventy-eight (78) percent receive a supplement that is at or close to (within \$2,000) the maximum allowed by law. Judges on the state's highest

¹ This estimate assumes that the Legislature would increase only the state portion of the judges' salaries and would leave the system of county supplements in place.

² Based on the August 31, 2009 valuation of the retirement funds (the most recent valuation available).

³ See Government Code Sections 25.0015, 41.013, 45.175, 45.280, 46.002, 46.003 and 46.0031.

⁴ Funded by filing fees and court costs under Government Code Section 51.702.

courts do not receive a supplement because they are not associated with a given county or group of counties.

All of the judgeships in question are created by state law and are state, not county, judgeships. Thus, it is anomalous that the salary of a state judge is provided only in part by the state, with supplements being provided in greater and lesser amounts at the discretion and judgment of county authorities. It is also anomalous that high court justices and judges receive no supplements at all, while most of their judicial colleagues do.

Some public comment suggested that county supplements should be eliminated and the state should pay all of the salaries of its state judges. Other public comment, however, expressed the concern that while it was preferable for the state to assume the entire responsibility for the salaries of state judges, the state has historically been less consistent in making salary adjustments. Additional concerns were also voiced about losing county benefits, which tend to be better than benefits offered by the state, if county supplements were eliminated.

The Commission recommends that the Legislature consider having the state assume full responsibility for the salaries of state judges. This recommendation is made in the context of the findings of the Commission concerning the need for **regular evaluations of salary levels and adjustments to the salaries of judges that, at the very least, keep up with inflation.**

Linkage to other retirement benefits: Increases in the salaries of district judges result, by statute, in increases in pension benefits for other state officials and employees. The reasons why a judge's salary should or should not be increased, however, are different from the reasons why benefits of other public officials or employees should or should not be increased. This is evident in the fact that the Commission, in making its recommendation about judicial pay, is asked to consider factors that are specific to judges.

When a recommendation to increase judicial pay, however, leads to a significantly larger fiscal note than that required to increase judicial pay alone, the inevitable budget pressures make it, realistically, more difficult to achieve increase in judicial pay. Likewise, the linkage between an increase in a judge's pay and an increase in a legislator's pension benefits can lead to perceptions of a conflict of interest. It is even possible that the statutory linkage violates the Separation of Powers clause in the Texas Constitution, depending upon the extent to which the statutory linkage *in fact* creates an undue relationship in the minds of legislators, between judicial compensation and their own retirement benefits. (*See memorandum on the constitutionality of the linkage between judicial compensation and legislative retirement in Appendix B*).

Other Issues for Future Study

In the course of its work this year, the Commission has identified certain issues that deserve further study and possible recommendations in future reports.

Longevity pay: In 2005, the Legislature approved longevity pay for judges. Longevity pay can be one factor in encouraging judges to stay on the bench and to acknowledge publicly the length of their service.

Supplements for administrative and specialized dockets: The presiding judges of each administrative judicial region and district judges who are assigned statutory mass tort dockets (asbestos and silica) are paid and supplemented in a manner that is different from the scale that applies to other judges.

Pension benefits: The Commission received public comment concerning the need for an in-depth review of pension benefits received by judges. See the Employee's Retirement System's website at <http://www.ers.state.tx.us/retirement/jrs/default.aspx> for a more detailed explanation of these benefits.

In general, Texas judges pay six percent of their salary each year and, in return, receive upon vesting (after 20 years of service regardless of age or with 10 to 12 years of service at age 65) lifetime benefits under a fixed-benefit plan. The benefits are a minimum of 50 percent of the judge's salary upon retirement.

There are two judicial retirement levels. Under Plan I, the salary upon which the judge's benefits are calculated automatically increases whenever judicial salaries are increased by the Legislature. Under Plan II, the salary upon which the judge's benefits are calculated is not automatically increased when the Legislature increases judicial salaries. Any increase to Plan II judges' benefits must be specifically provided by the Legislature.

One issue raised is the fact that the pension benefits of Plan II judges, unlike Plan I judges, are not subject to adjustments based on increases in judicial pay that occur post-retirement.

II. History and Function of the Commission

The Judicial Compensation Commission was created by the 80th Legislature effective September 1, 2007.⁵ It is composed of nine members who are appointed by the Governor with the advice and consent of the Senate to serve six-year terms. No more than three members serving on the Commission may be licensed to practice law.

The Commission is responsible for making a report to the Texas Legislature no later than December 1 of each even-numbered year recommending the proper salaries to be paid by the state for all justices and judges of the Supreme Court of Texas, the Court of Criminal Appeals of Texas, the courts of appeals and the district courts. In recommending the proper salaries for the justices and judges, the Commission is required to consider the factors listed in Section IV of this report.

The Commission held its first meeting of the biennium on January 20, 2010 at the Office of Court Administration. At this meeting, the Commission decided to continue using the committee structure established during the previous biennium. Pat Mizell volunteered to chair the Fact Gathering Committee, and Mike Slack volunteered to chair the Public Comment Committee.

The Public Comment Committee took comment on issues related to judicial compensation at a meeting on April 15, 2010 at the Texas State Bar.

The Data Gathering Committee worked with staff of the Office of Court Administration to compile and analyze data concerning the factors that must be considered by the Commission. Mr. Mizell and Angela Garcia presented a summary of the Data Gathering Committee's findings to the Commission at its meeting on July 16, 2010.

The Commission held an additional meeting on October 8, 2010 to review the draft report and finalize its recommendations.

The minutes of all the Commission's meetings for the biennium are attached as Appendix A.

⁵ Acts 2007, 80th Legislature, Regular Session, Ch. 1090, September 1, 2007. Texas Government Code, Chapter 35.

III. Current Structure of Judicial Salaries

The state salary of justices and judges of the Supreme Court, the Court of Criminal Appeals, the courts of appeals and the district courts are set by the Texas Legislature in the General Appropriations Act. Section 659.012 of the Texas Government Code provides the salary minimums that must be paid by the State and provides salary differentials that must be maintained between the three levels of the judiciary—the highest appellate courts, the intermediate appellate courts and the district courts. In addition, Sections 31.001 and 32.001 of the Texas Government Code authorize counties to supplement the salaries of the courts of appeals justices residing within their courts of appeals districts and the judges of the district courts that have jurisdiction in their counties.

Table 3 summarizes current state judicial salaries and supplements:

Table 3: Current Judicial Compensation

Judge	State Salary ¹	Additional Compensation ²	Total
Supreme Court Chief Justice / Court of Criminal Appeals Presiding Judge	\$152,500	n/a	\$152,500
Supreme Court Justice / Court of Criminal Appeals Judge	\$150,000	n/a	\$150,000
Court of Appeals Chief Justice	\$140,000	up to \$7,500	\$147,500
Court of Appeals Justice	\$137,500	up to \$7,500	\$145,000
District Court Judge	\$125,000	up to \$15,000	\$140,000

Notes:

1. The state salary of a district judge whose county supplement exceeds \$15,000, or appellate justice whose county supplement exceeds \$7,500, will be reduced by the amount of the excess so that the maximum salary the judge or justice receives from state and county sources is \$140,000 (district judge), \$145,000 (appellate justice), or \$147,500 (appellate chief justice). See Government Code Sections 659.012, 31.001 and 32.001.
2. Additional compensation provided by counties in judicial and appellate districts for extra judicial service performed by judges and justices. See Government Code Sections 31.001 and 32.001.

Currently, the annual state salary of a district judge is \$125,000. The total annual salary including county supplements for a district judge is limited to \$140,000—\$5,000 less than the combined salary from state and county sources provided for a justice of a court of appeals.

As **Table 4** shows, of the 453 district court judges in the state, only 10 do not receive a county salary supplement. The majority, 355 judges (78 percent), receive a supplement that is at or close to (within \$2,000) the maximum allowed by law.

Table 4: County Supplements Received by District Judges

DISTRICT COURTS			
Number of Judges	Percentage of all Judges	County Supplement	Total Salary
326	72.0%	\$14,999 to 15,000	\$140,000
17	3.8%	\$14,000 to 14,998	\$139,083 to 139,983
12	2.6%	\$13,000 to 13,999	\$138,000 to 138,776
7	1.5%	\$12,000 to 12,999	\$137,000 to 137,670
6	1.3%	\$11,000 to 11,999	\$136,000 to 136,808
14	3.1%	\$10,000 to 10,999	\$135,000 to 135,800
9	2.0%	\$9,000 to 9,999	\$134,000 to 134,769
15	3.3%	\$8,000 to 8,999	\$133,000 to 133,850
12	2.6%	\$7,000 to 7,999	\$132,000 to 132,875
7	1.5%	\$6,000 to 6,999	\$131,000 to 131,633
2	0.4%	\$5,000 to 5,999	\$130,000 to 130,919
7	1.5%	\$4,000 to 4,999	\$129,000 to 129,800
5	1.1%	\$3,000 to 3,999	\$128,000 to 128,733
2	0.4%	\$2,000 to 2,999	\$127,000 to 127,880
0	0.0%	\$1,000 to 1,999	\$126,000 to 126,999
2	0.4%	\$1 to 999	\$125,001 to 125,900
10	2.2%	\$0	\$125,000
AVERAGE		\$13,272	\$138,267

A justice of a court of appeals is entitled to 110 percent of the state salary of a district judge, which currently amounts to \$137,500. The total annual salary including supplements for a court of appeals justice, other than a chief justice, is limited to \$5,000 less than the salary of an associate justice on the Supreme Court, for current maximum of \$145,000. Chief justices of the courts of appeals are entitled to an additional \$2,500 from the state.

All of the justices of the 14 courts of appeals in Texas receive county supplements, and justices on all but two courts of appeals (employing seven justices) receive the maximum allowed by law. **Table 5** details the county supplements received by intermediate appellate court justices.

Table 5: County Supplements Received by Intermediate Appellate Court Justices

INTERMEDIATE APPELLATE COURTS			
Number of Justices	Percentage of all Justices	County Supplement	Total Salary
73	91.2%	\$7,500	\$145,000
3	3.8%	\$6,573	\$144,073
4	5.0%	\$3,947	\$141,447
AVERAGE		\$7,310	\$144,810

A justice or judge on the highest appellate courts—the Supreme Court and the Court of Criminal Appeals—is entitled to an annual salary from the state that is equal to 120 percent of the annual state salary of a district court judge, for a current salary of \$150,000. The chief justice of the Supreme Court and the presiding judge of the Court of Criminal Appeals are entitled to an additional \$2,500 from the state. None of the justices or judges sitting on the highest courts of Texas receive any county supplements.

Judges who have completed at least 16 years of service also receive longevity pay in an amount equal to 3.1 percent of the judge’s current monthly state salary (approximately \$322 per month, or \$3,864 per year). Longevity pay is not dependent on whether a judge serves on a district, intermediate appellate, or high court.

Local administrative judges, presiding judges of the administrative judicial regions, and district judges who preside over silica or asbestos multi-district litigation are entitled to additional compensation as well.

As noted in the conclusion of the Commission’s 2008 report, one of the most important factors the Commission must take into account is maintaining a structural balance, or differential, between the highest appellate courts, intermediate appellate courts, and district courts. Not only is that concept embedded in the governing statutes, but stakeholders consistently stressed the importance of keeping the respective salaries of judges in a relative balance to each other.

The amount of the differential is a matter of some debate. Texas law provides that the state salary of an intermediate appellate justice should be exactly 10 percent higher than that of a district judge, and the state salary of a high court judge or justice should be exactly 20 percent higher than that of a district judge.⁶

Texas law also provides a salary differential among the three levels of state courts based on their *total* salary, including county salary supplements. The supplemented salary of a district judge must be at least \$5,000 less than the salary an intermediate appellate justice, which in turn must be at least \$5,000 less than the salary of a high court justice or judge.

⁶ Section 659.102(a) of the Government Code.

Another structural element that may not affect the substance of the Commission's recommendations, but certainly affects adoption of the recommendations by the Legislature, is the linkage of judicial salaries by statute to pension benefits for other state officials and employees.

An increase in judicial salaries results in increases in:

- salaries of prosecutors whose salaries and supplements are paid for by the state and are linked to the salary of a district judge;⁷
- supplements paid to statutory county court judges;⁸
- and annuities of prosecutors and other elected officials (including legislators) who receive a salary from the state.

In the Commission's last report, the statutory linkages for prosecutors and statutory county court judges accounted for approximately 24 percent of the estimated fiscal impact to the state of the judicial salary increases recommended by the Commission.

The Texas Employees Retirement System estimated that the fiscal impact to the retirement system resulting from increases to the annuities of elected officials and prosecutors who receive a salary from the state was *de minimis*, or so insignificant as not to be included the estimated fiscal impact.

Members of the Commission and many individuals who testified before the Commission were very concerned about the linkage between judicial and legislative compensation. Despite the supposed minimal fiscal impact of increasing pension benefits to elected officials and prosecutors, this arrangement means that when legislators vote to increase judges' salaries, they are also voting to increase their own pensions. Because of the possibility of a perceived conflict of interest, legislators may be reluctant to vote for increases to judicial salaries despite an apparent need for increased compensation.

The National Center for State Courts notes that "reliance on legislative and appropriation processes to set judicial salaries greatly increases the likelihood that judicial pay issues will be held captive to unrelated differences between the political branches of government, or to dissatisfaction with specific court decisions," thereby infringing on the independence of the judicial branch. The Center recommends that judicial salary issues be insulated from the political process. "Judicial pay levels should be set regularly and justified based on accepted, easy to measure, objective benchmarks that render the process more transparent and less political."⁹

The subjection of the issue of judicial compensation to unrelated politics has led to litigation in recent years in the state of New York, where judges have not received a raise

⁷ See Government Code Sections 41.013, 45.175, 45.280, 46.002 and 46.0031.

⁸ Government Code Section 25.0015. However, these supplements are funded by an additional filing fee and court cost imposed by Government Code Section 51.702.

⁹ David Rottman, William Raftery, and Amy Smith, *Judicial Compensation in New York: A National Perspective*. Williamsburg: National Center for State Courts (May 2007).

since 1999. In February 2010, a high court decided that the independence of the judiciary had been jeopardized and that the constitutional separation of powers had been violated because the legislative and executive branches had failed to consider judicial compensation on its own merits.¹⁰

The Commission asked the Office of Court Administration to examine the constitutionality of the arrangement in Texas. The resulting memo is reproduced in Appendix B of this report.

IV. Factors Required to be Considered by the Commission

In determining what a “proper” salary would be, the Commission is required to consider the following eight factors:

- 1) the skill and experience required of the particular judgeship at issue;
- 2) the value of compensable service performed by justices and judges, as determined by reference to judicial compensation in other states and the federal government;
- 3) the value of comparable service performed in the private sector, including private judging, arbitration, and mediation;
- 4) the compensation of attorneys in the private sector;
- 5) the cost of living and changes in the cost of living;
- 6) the compensation from the state presently received by other public officials in the state, including:
 - A) state constitutional officeholders;
 - B) deans, presidents, and chancellors of the public university systems; and
 - C) city attorneys in major metropolitan areas for which that information is readily available;
- 7) other factors that are normally or traditionally taken into consideration in the determination of judicial compensation; and
- 8) most importantly, the level of overall compensation adequate to attract the most highly qualified individuals in the state, from a diversity of life and professional experiences, to serve in the judiciary without unreasonable economic hardship and with judicial independence unaffected by financial concerns.¹¹

The following is a summary of the Commission’s analysis of the data collected regarding these eight factors.

Factor 1: Skill and Experience Required of the Particular Judgeship at Issue

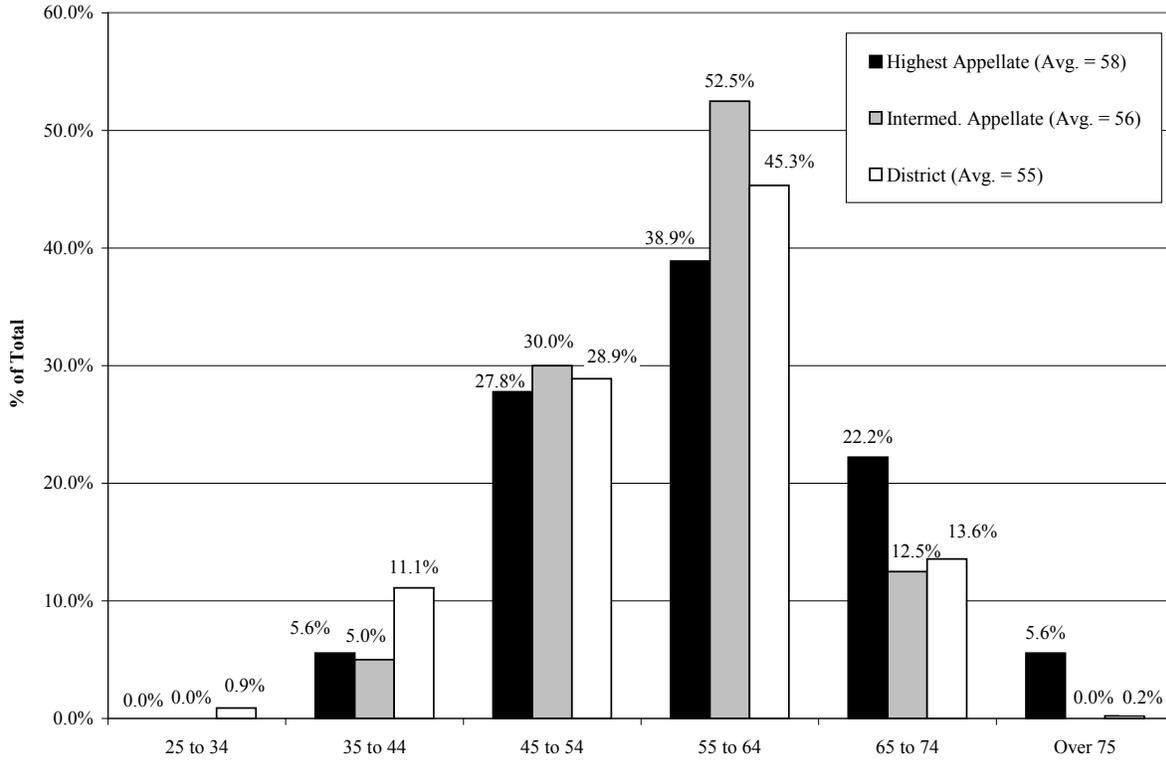
District court judges must be at least 25 years old and have been a practicing lawyer or judge, or both combined, for at least four years. Appellate court justices and judges must be at least ten years older—35 years or older—and have practiced law or been the judge of a court of record and practiced law for at least 10 years.

Data reviewed by the Commission show that the Texas state judiciary is very experienced. According to demographic statistics maintained by the Office of Court Administration, more than 60 percent (330 of 548 judges) of the judges serving on the bench as of July 31, 2010 were 55 years of age or older, and the average age at each court level was 55 years or more. **Figure 1** details the age of judges serving on the bench.

¹⁰ 2010 NY Slip Op 1528, 18 (N.Y. Feb. 23, 2010).

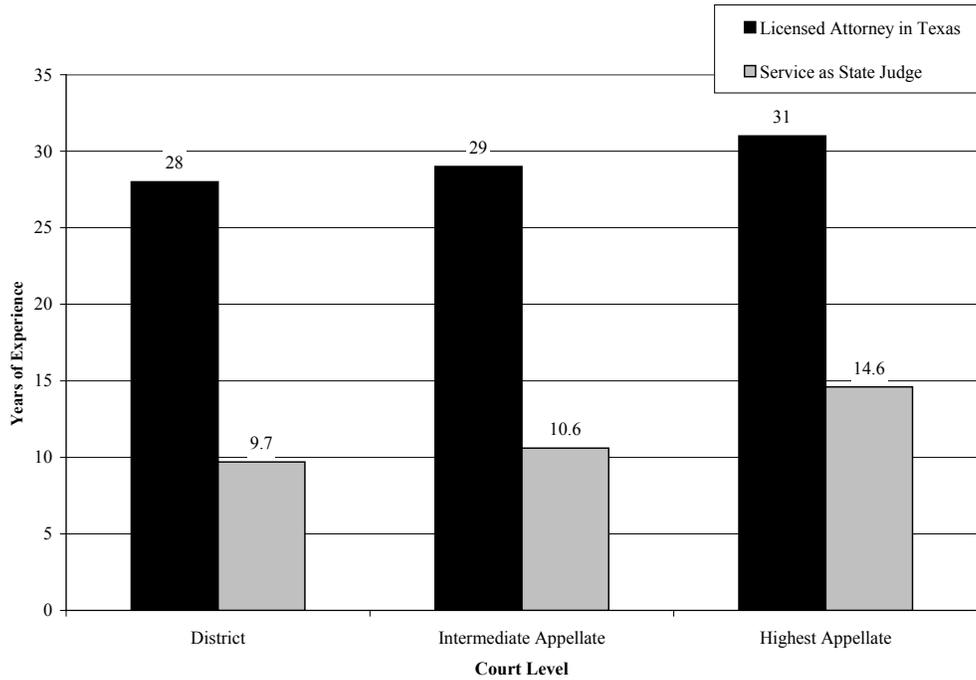
¹¹ Government Code, Section 35.102(b).

Figure 1: Age of Judges Serving on the Bench as of July 31, 2010



As of July 31, 2010, active district judges had served an average of nearly 10 years on the bench and an average of 28 years as attorneys (including the years of judicial service). Justices of the intermediate appellate courts had served an average of more than 10 years on the bench and an average of 29 years as attorneys. Justices and judges of the highest appellate courts had served an average of more than 14 years on the bench and an average of 31 years as attorneys. **Figure 2** details the average years of experience of state judges.

Figure 2: Average Years of Experience of State Judges as of July 31, 2010



Factor 2: Value of Compensable Service Performed by Justices and Judges, as Determined by Reference to Judicial Compensation in Other States and the Federal Government

A wealth of data exists about the judicial salaries in other states. These data have been collected by the National Center for State Courts (“NCSC”) for each year since 1974.

The NCSC provides data on the actual and “normalized” salaries of judges. The purpose of normalizing data is to allow for an apples-to-apples comparison of salaries between states by adjusting salaries in each state by a cost-of living factor to determine the purchasing power of that salary in a given state. The Center uses the most widely accepted United States source of cost-of-living indices, the indices produced by the Council for Community and Economic Research (C2ER, formerly known as the ACCRA organization).¹²

For its comparison of compensation in other states, the Commission focused on salaries in the nine other most populous states.

As **Table 6** shows, on an actual salary basis, judges in Texas’ highest courts rank eighth among the 10 most populous states. When salaries are adjusted by a cost-of-living factor, Texas judges rank fifth.

¹² See *NCSC Survey of Judicial Salaries*, Vol. 35, No. 1, pg. 3, January 1, 2010.

**Table 6: Salaries of Judges of Highest Courts
in the Ten Most Populous States as of January 1, 2020**

HIGHEST COURTS							
State	Est. 2008 Population		Unadjusted		Adjusted		
	Pop.	Rank	Salary	Rank	Adj. Factor	Salary	Rank
California	36,756,666	1	\$218,237	1	133.38	\$163,620	6
Texas	24,326,974	2	\$150,000	8	90.63	\$165,508	5
New York	19,490,297	3	\$151,200	7	125.83	\$120,162	10
Florida	18,328,340	4	\$157,976	6	102.21	\$154,560	7
Illinois	12,901,563	5	\$201,819	2	96.52	\$209,096	1
Pennsylvania	12,448,279	6	\$186,450	3	100.84	\$184,897	2
Ohio	11,485,910	7	\$141,600	9	93.21	\$151,915	8
Michigan	10,003,422	8	\$164,610	5	96.87	\$169,929	4
Georgia	9,685,744	9	\$167,210	4	90.73	\$184,294	3
North Carolina	9,222,414	10	\$137,249	10	96.37	\$142,419	9

Assuming a maximum possible salary (with county supplements) of \$145,000, justices of the intermediate appellate courts in Texas rank seventh in terms of actual salaries, but fourth when adjusted for cost-of-living, as **Table 7** shows. However, if county supplements are not considered, Texas ranks eighth among the actual salaries paid in the ten most populous states.

**Table 7: Salaries of Justices of Intermediate Appellate Courts
in the Ten Most Populous States as of January 1, 2020**

INTERMEDIATE APPELLATE COURTS							
State	Est. 2008 Population		Unadjusted		Adjusted		
	Pop.	Rank	Salary	Rank	Adj. Factor	Salary	Rank
California	36,756,666	1	\$204,599	1	133.38	\$153,396	6
Texas	24,326,974	2	\$145,000	7	90.63	\$159,991	4
New York	19,490,297	3	\$144,000	8	125.83	\$114,440	10
Florida	18,328,340	4	\$150,077	6	102.21	\$146,832	7
Illinois	12,901,563	5	\$189,949	2	96.52	\$196,798	1
Pennsylvania	12,448,279	6	\$175,923	3	100.84	\$174,458	3
Ohio	11,485,910	7	\$132,000	9	93.21	\$141,616	8
Michigan	10,003,422	8	\$151,441	5	96.87	\$156,334	5
Georgia	9,685,744	9	\$166,186	4	90.73	\$183,165	2
North Carolina	9,222,414	10	\$131,531	10	96.37	\$136,485	9

Assuming a maximum possible salary (with county supplements) of \$140,000, Texas district court judges rank sixth in terms of actual salaries and fourth when cost-of-living adjustments are factored in, as **Table 8** shows. However, if county supplements are not considered, Texas ranks eighth in actual salaries paid to general jurisdiction trial court judges.

Table 8: Salaries of General Jurisdiction Trial Court Judges in the Ten Most Populous States as of January 1, 2020

GENERAL JURISDICTION TRIAL COURTS							
State	Est. 2008 Population		Unadjusted		Adjusted		
	Pop.	Rank	Salary	Rank	Adj. Factor	Salary	Rank
California	36,756,666	1	\$178,789	1	133.38	\$134,045	7
Texas	24,326,974	2	\$140,000	6	90.63	\$154,754	4
New York	19,490,297	3	\$136,700	8	125.83	\$108,639	10
Florida	18,328,340	4	\$142,178	5	102.21	\$139,104	6
Illinois	12,901,563	5	\$174,303	2	96.52	\$180,587	1
Pennsylvania	12,448,279	6	\$161,850	3	100.84	\$160,502	2
Ohio	11,485,910	7	\$121,350	10	93.21	\$130,190	8
Michigan	10,003,422	8	\$139,919	7	96.87	\$144,440	5
Georgia	9,685,744	9	\$144,752	4	90.73	\$159,541	3
North Carolina	9,222,414	10	\$124,382	9	96.37	\$129,067	9

As noted in Section III: Current Structure of Judicial Salaries, Texas law provides a salary differential among the three levels of state courts based on their *total* salary, including county salary supplements. The supplemented salary of a district judge must be at least \$5,000 less than the salary an intermediate appellate justice, which in turn must be at least \$5,000 less than the salary of a high court justice or judge. As **Table 9** shows, this \$10,000 range constitutes a seven percent spread in salaries, which is the smallest difference among the 10 most populous states. This compares to a 23 percent spread for the federal judicial system and a median of 16 percent for the nine most populous states other than Texas.

Table 9: Salary Spread Between General Jurisdiction Trial Courts and Highest Courts for the Ten Most Populous States

Pop Rank	State	General	Intermediate	Highest	% Spread District Court to Highest Court
1	California	\$178,789	\$204,599	\$218,237	22.1%
2	Texas	\$140,000	\$145,000	\$150,000	7.1%
3	New York	\$136,700	\$144,000	\$151,200	10.6%
4	Florida	\$142,178	\$150,077	\$157,976	11.1%
5	Illinois	\$174,303	\$189,949	\$201,819	15.8%
6	Pennsylvania	\$161,850	\$175,923	\$186,450	15.2%
7	Ohio	\$121,350	\$132,000	\$141,600	16.7%
8	Michigan	\$139,919	\$151,441	\$164,610	17.6%
9	Georgia	\$144,752	\$166,186	\$167,210	15.5%
10	North Carolina	\$124,382	\$131,531	\$137,249	10.3%

The Commission also considered the judicial compensation of federal judges. Federal district court judges currently earn \$169,300, intermediate appellate justices earn \$179,500, and Supreme Court justices earn \$208,100.

The Commission chose not to tie its recommendation to the salaries of federal judges for several reasons. First, to increase salaries to the extent necessary to match federal salaries would result in a fiscal note that did not seem realistic to the Commission at this time. Second, no other state ties its judicial salaries to the salaries of a federal judge. Third, federal salaries are not normalized; that is, a federal judge in California gets paid the same amount as a federal judge in Illinois, even though there is a more than 40 percent difference in the cost of living between those states.

Factor 3: Value of Comparable Services Performed In the Private Sector, Including Private Judging, Arbitration and Mediation

It was difficult to obtain definitive information about the rates of compensation that can be obtained in the private sector by serving as a private judge, arbitrator or mediator. Compensation can range widely and is not provided on an annual salary basis. In 2008, the Commission obtained information from a small sample of mediators and arbitrators that indicated that rates ranged from \$75 to \$300 per hour *per party*. The American Arbitration Association (AAA), one of the nation’s leading arbitration associations, reported that rates averaged \$2,000 to \$2,500 per case per day.

The information obtained by the Commission demonstrates that judicial skills do have significant market value in the private sector. Assuming a docket of cases involving only two parties, a mediator, arbitrator or private judge could earn gross fees equal to the salary of a district judge every eight weeks, at the highest rates, or, based on the rates cited by AAA, could earn gross fees equal to the salary of a district judge in two to three months. These numbers would, of course, need to be adjusted to account for overhead and benefits that a private judge, arbitrator or mediator would need to pay for out of his

or her earnings, but the numbers do give a sense of the value that such services can command in the private sector.

Factor 4: Compensation of Attorneys in the Private Sector

For the analysis of private sector attorney compensation, the Commission reviewed the private practitioners' income data collected by the State Bar of Texas for its *Private Practitioner 2009 Income Report*. The State Bar sent a questionnaire electronically on April 7, 2010 to all active attorneys who had not opted out of taking surveys (73,140 attorneys). The survey's response rate was 12 percent, with a total of 8,467 attorneys responding.

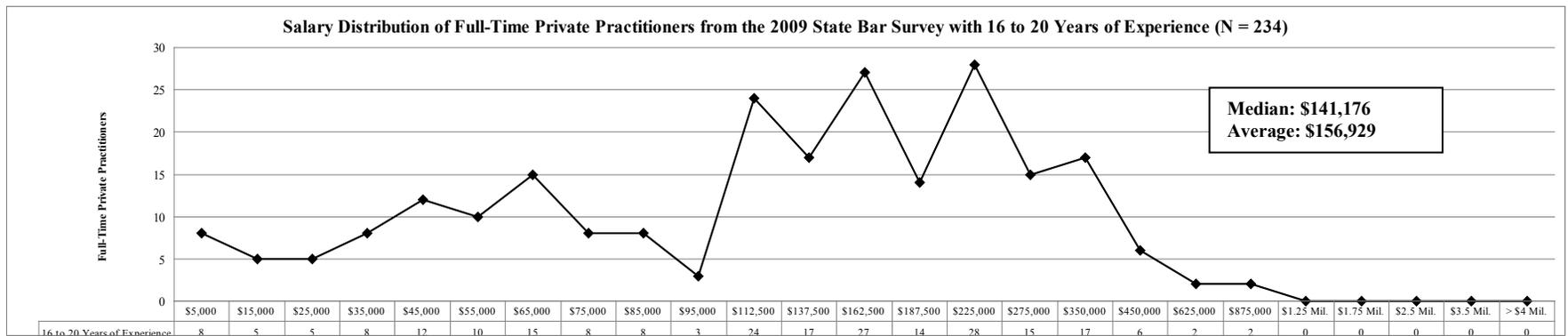
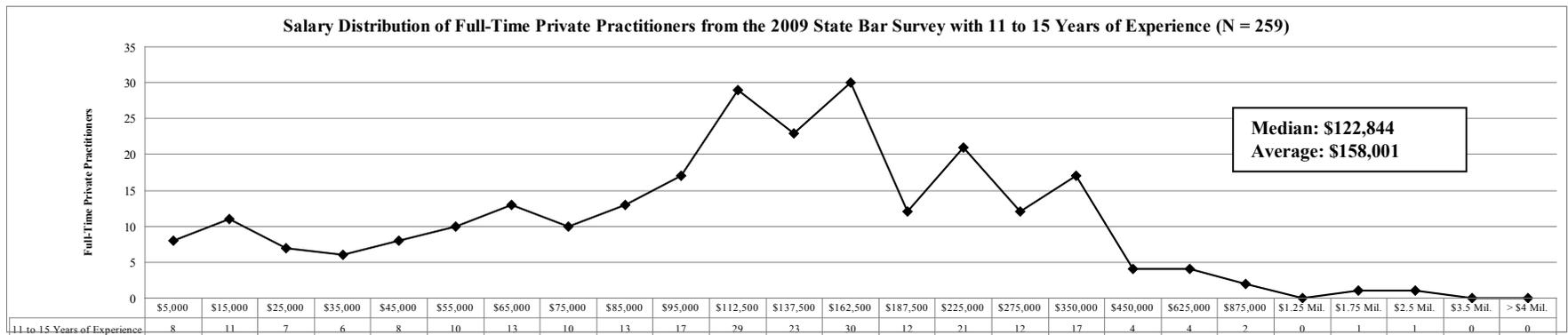
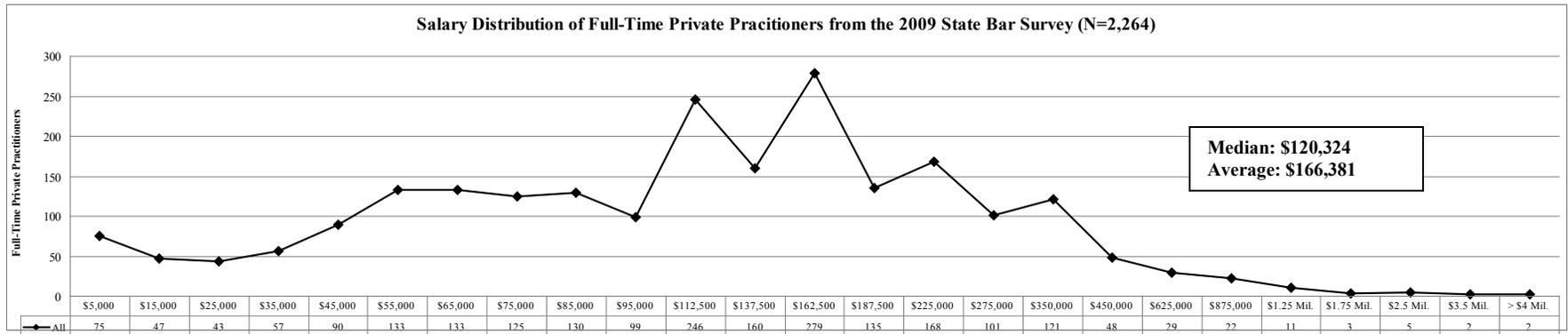
A total of 2,264 full-time, private practitioner attorneys responded to the survey. Results of the survey showed that the salaries of lawyers vary widely.

As **Figure 3** shows, overall, full-time private practitioners had a median salary of \$120,324 and an average salary of \$166,381. Nearly 23 percent of the attorneys had salaries of \$187,500 or more.

Lawyers with 11 to 15 years of experience had a median salary of \$122,884 and an average salary of \$158,001. Twenty-four (24) percent of attorneys in this group had salaries of \$187,500 or more.

Lawyers with 16 to 20 years of experience had a median salary of \$141,176 and an average salary of \$156,929. Thirty (30) percent of lawyers in this group had salaries of \$187,500 or more.

Figure 3: Salary Distribution of Full-Time Private Practitioners from 2009 State Bar Survey



In July 2010, at the request of the Commission, the Office of Court Administration surveyed active district and appellate judges to obtain information on the salaries that these judges earned immediately before becoming a judge.

As **Figure 4** shows, of the 199 judges who responded to the survey, 74 percent indicated that they came to the state bench directly from the private sector.

Figure 4: Sector in Which Judge Worked Before Assuming a State Bench

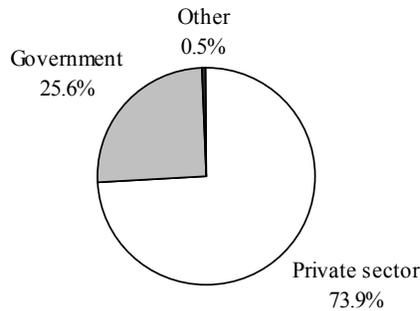
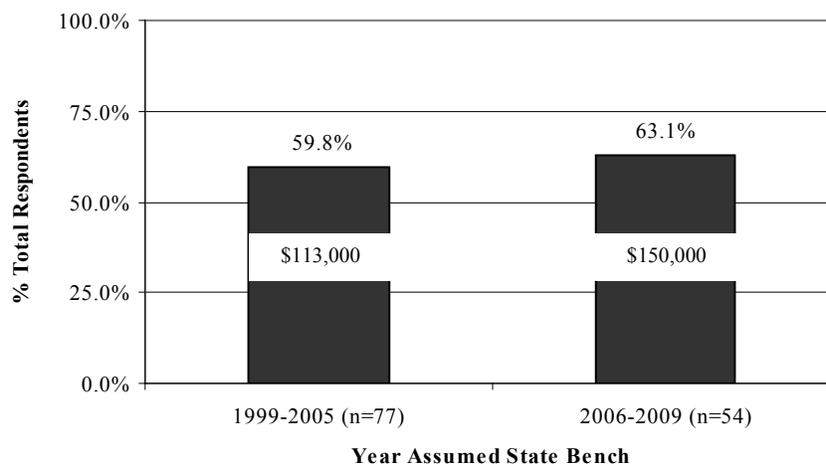


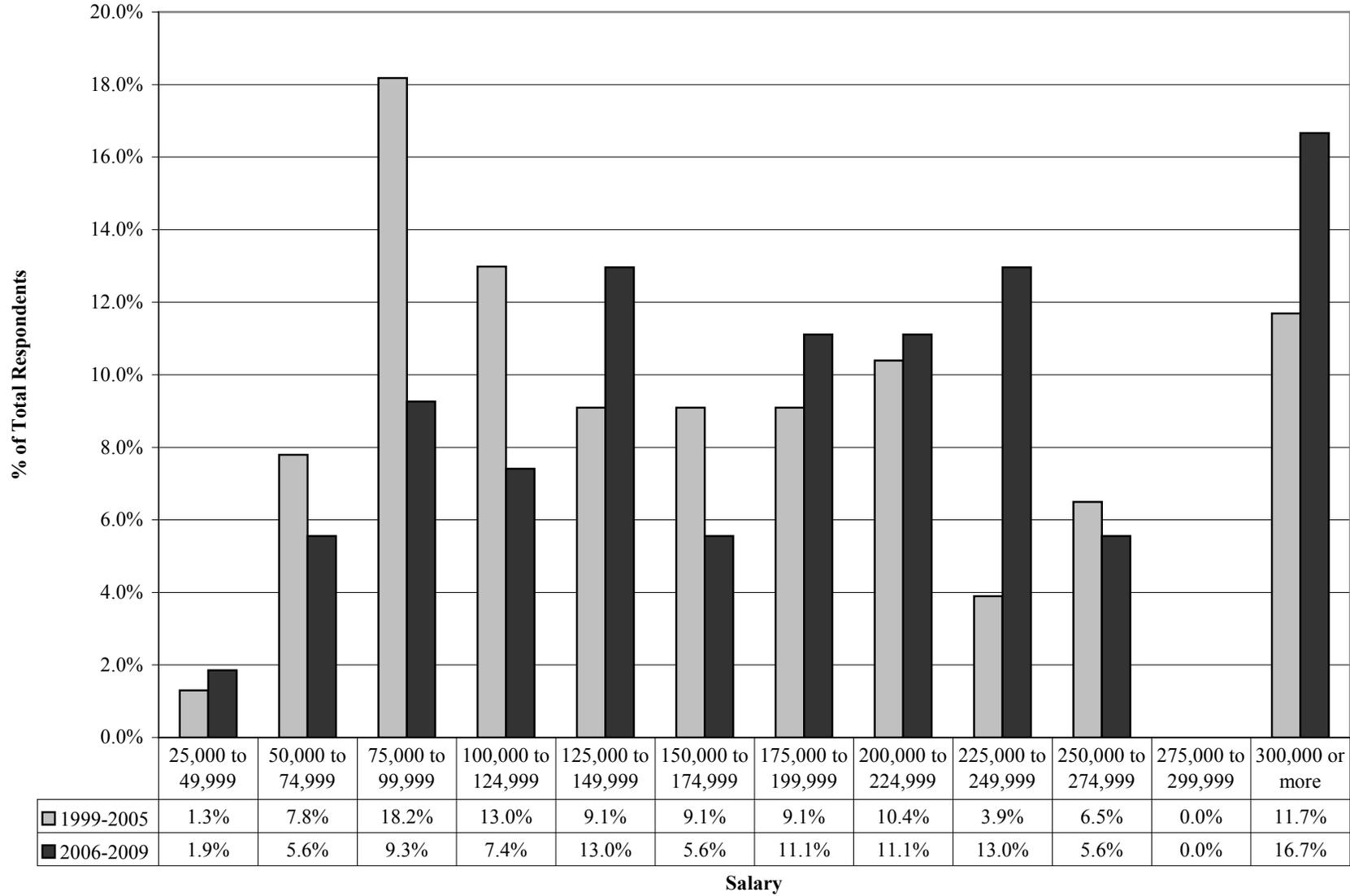
Figure 5 shows that more than 60 percent of judges who assumed the bench between the years of 1999 and 2005 indicated that they made as much as or more than the salary of a judge on the Supreme Court or Court of Criminal Appeals at the time (\$113,000).¹³ Sixty-three (63) percent of judges who assumed the bench from 2006 to 2009 made more than the salary of a judge on one of the high courts at the time (\$150,000). **Figure 6** details the salary earned by judges before assuming a state bench.

Figure 5: Percentage of Judges Who Earned as Much as or More than the Salary of a Supreme Court Justice or Judge of the Court of Criminal Appeals Prior to Assuming a State Bench



¹³ Note: The exact percentage of respondents who made more than a judge on a high court from 1999 to 2005 was not able to be calculated due to the fact that salary ranges were used in the survey, rather than exact figures. The minimum was 59.8 percent, and the maximum was 72.7 percent.

Figure 6: Salary Earned by Judges Before Assuming State Bench



To become a judge, many attorneys may not only have to take a decrease in salary but may also have to relinquish many opportunities for income and investment due to the code of ethics that is unique to the judicial branch of government. As one judge testified to the Commission,

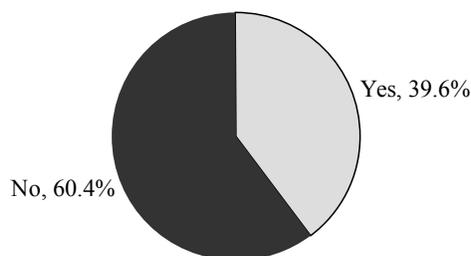
“The requirements to avoid wrongful influences and to maintain public confidence, call for judges to operate under different ethics than those of the other branches of government. These ethics are in part reflected in the Code of Judicial Conduct. Canon Two of that code provides that a judge shall not allow any relationship to influence a judge’s conduct or judgment, and the Canon prohibits a judge from using the prestige of judicial office to benefit self or others. Canon Four requires judges to restrict their outside activities so as not to interfere with the proper performance of their duties.

These abstract principles have a real impact on a judge’s income. We want judges to have experience and be good lawyers. Therefore most will have solid careers in law with many well-paying clients who the lawyer developed over years of hard work. Many are partners with other lawyers, and the partnership may own the office building where the lawyers are located or perhaps own other business interests, such as a title insurance company. Many lawyers are Board Certified in a particular field of law and most are leaders, involved in their community by serving on charitable boards, often a source of business.

When a lawyer becomes a judge, the new judge must cease practicing law, so those loyal clients the lawyer developed will redirect their loyalty to another attorney. The new judge must withdraw from law partnerships because continuing to practice would interfere with judge’s duties and continuing in partnership with other lawyers would give the perception that the former partners have undue influence on the judge. For the same reasons, the new judge must sell any interest in real estate partnerships with other lawyers, as well as sell the title company or other business interests that would conflict with judicial duties. Because often a judge does not concentrate 40 percent of time to a particular area of law, the judge must relinquish Board Certifications of special competence. And a judge cannot serve on charitable boards if the time commitment interferes with judicial duties or if the charity regularly comes before the court.”

As part of the survey conducted by the Office of Court Administration in July 2010 to obtain information on the salaries that judges earned immediately before becoming a judge, judges were asked if they had to relinquish other income opportunities as a result of assuming the bench. Of the 197 respondents who answered the question, approximately 40 percent indicated that they had to give up other income, as **Figure 7** shows.

Figure 7: Survey of Current State Judges: “Did you have income that you can no longer collect (investments, partnerships, etc.) because you are now a judge?”



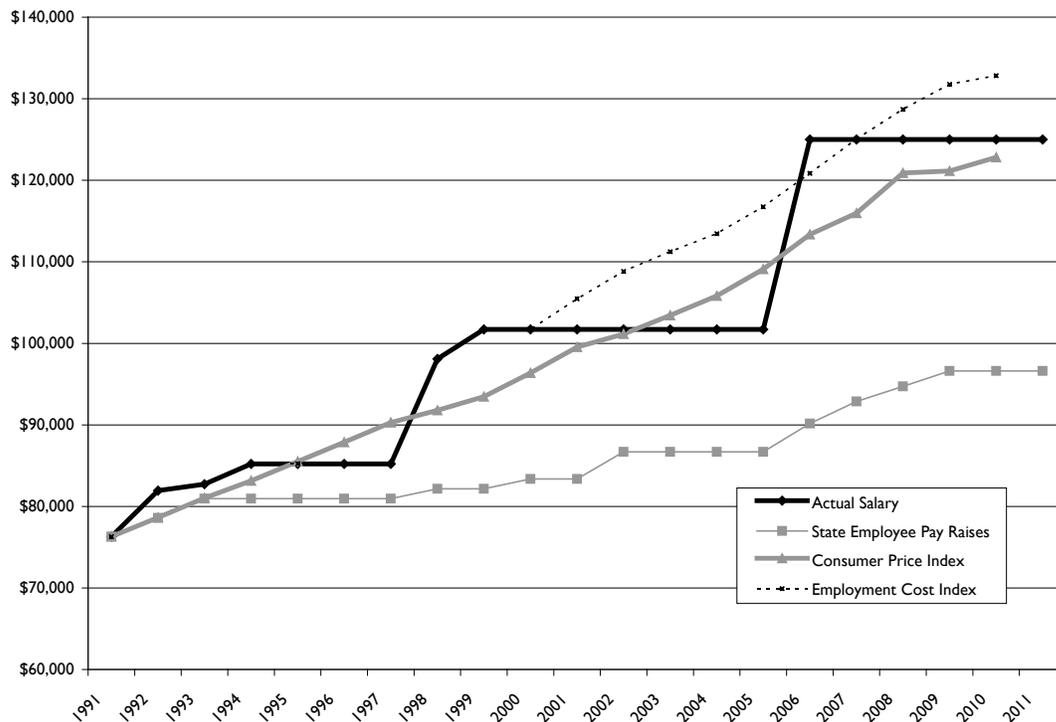
While every public servant knows that they are unlikely to earn as much as they would in the private sector, the current level of and process for establishing judicial compensation are disincentives for high quality, experienced attorneys to enter the judiciary. They are also incentives for current judges to leave the judiciary, as evidenced by the testimony from numerous judges who have had to leave in order to fund their children’s college education or who have left because they actually earn more by retiring.

Factor 5: Cost of Living and Changes in the Cost of Living

The Consumer Price Index for all Urban Workers (CPI-U) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services, such as transportation, food and medical care. The Employment Cost Index (ECI) is a quarterly measure of changes in labor costs. Both measures are reported by the U.S. Bureau of Labor Statistics.

Figure 8 illustrates the relationship between judicial salaries, the CPI-U and the ECI from 1991 to present. From 1998 to 2005, judicial salaries stayed static while inflation (measured by the Consumer Price Index) climbed by 20 percent. From December 2005 (when the last salary adjustment was implemented) to June 2010, inflation rose another 10.8 percent.

Figure 8: History of Actual District Judge Salaries and What They Would have been Based on Regular Cost of Living Increases



Note: This chart assumes that the salaries of judges in 1991 were proper and adequate, which may or may not have been the case.

The Commission also finds this chart to be a compelling display of:

- the inconsistent and unpredictable changes made to judicial salaries over the years,
- the eroding power of inflation on judicial salaries, and
- the substantial increases that had to be made to “catch up” salaries with the cost of living due to the inconsistent and infrequent adjustments made to judicial salaries.

This unpredictable pattern of adjustments can cause an otherwise adequate salary to become inadequate and financially worrisome. In addition, while the occasionally significant increases made to judicial salaries may seem to “catch up” salaries levels to the cost of living, the judges actually lose potential income from interest they could have earned on increased salary levels during that period.

The Commission understands and appreciates the need of the Legislature to control the budget by evaluating each biennium the effect of proposed increases, and so the Commission is making a specific recommendation only for the upcoming biennium. The Commission believes, however, that **anticipating regular adjustments is one of the most important policy goals to be achieved for Texas judicial salaries**. The current system for compensating judges is unpredictable and creates lengthy periods during which judges’ compensation is eroded by inflation. Regular, systematic increases would make judicial compensation more predictable and would offset the effects of inflation.

While some judges have commented that judges should receive raises similar to every other state employee, **Figure 8** also shows that if judges were to be given increases based on those given to state employees, their salaries would lag far behind inflation, as state employees are not given regular and systematic increases.

Factor 6: Compensation from the State Presently Received by Other Public Officials

The Commission is required by statute to consider the compensation from the state presently received by other public officials in the state, including state constitutional officeholders; deans, presidents, and chancellors of the public university systems; and city attorneys in major metropolitan areas for which that information is readily available. The information gathered by the Commission is set out in **Tables 10 through 13**.

Table 10: Salaries of State Constitutional, Elected and Other High-Ranking Executive Office Holders

Position	Annual Salary
Executive Director: Employees Retirement System	\$300,000
Executive Commissioner: Health and Human Services	\$210,000
Executive Director: Department of Transportation	\$192,500
Commissioner: Texas Education Agency	\$186,300
Executive Director: Department of Criminal Justice	\$186,300
Commissioner: Department of State Health Services	\$183,750
Executive Director: Department of Information Resources	\$175,000
Executive Director: Department of Public Safety	\$162,000
Executive Director: Texas Youth Commission	\$160,000
Comptroller of Public Accounts	\$150,000
Attorney General	\$150,000
Governor	\$150,000
Executive Director: Commission on Environmental Quality	\$145,200
Agriculture Commissioner	\$137,500
Commissioner of the General Land Office	\$137,500
Railroad Commissioner	\$137,500
Secretary of State	\$125,880
<i>Average</i>	\$169,966
<i>Median</i>	\$169,000
SOURCE: General Appropriations Act, Text of Conference Committee Report, Senate Bill No. 1, Regular Session, Eighty-First Legislature, State of Texas, 2009, http://www.lbb.state.tx.us/Bill_81/6_FSU/Bill-81-6_FSU_0909.pdf .	

Table 11: Salaries of Law School Deans at Texas Public Universities

University	Salary
University of Texas at Austin	\$380,000 ¹
University of Houston	\$301,000 ²
Texas Tech University	\$261,664 ³
SOURCES:	
1. Kirston Fortune, Asst. Dean for Communications, UT School of Law. Data for FY 2010.	
2. Dona Hamilton Cornell, Vice Chancellor for Legal Affairs, UH System. Data for FY 2010.	
3. Maxine Young Asmah, Head of Public Services and Director, Texas Tech University, School of Law Library. Data for FY 2008.	

Table 12: Salaries of Public University Chancellors and Presidents

University	Position	State-Paid Portion of Salary	Supplements	Total
University of Texas System ¹	Chancellor	\$70,231	\$679,769	\$750,000
Texas A & M University System ²	Chancellor	\$70,231	\$584,889	\$655,120
University of Texas at Austin ¹	President	\$65,945	\$534,655	\$600,600
University of Texas at Dallas ¹	President	\$65,945	\$425,879	\$491,824
Texas State University System ³	Chancellor	\$70,231	\$389,840	\$460,071
Texas A & M University ²	President	\$65,945	\$359,055	\$425,000
University of Texas at Arlington ¹	President	\$65,945	\$342,505	\$408,480
Texas A & M Health Science Center ²	President	\$65,945	\$335,056	\$401,001
Prairie View A & M ²	President	\$65,945	\$323,755	\$389,700
University of Texas at El Paso ¹	President	\$65,945	\$316,255	\$382,200
University of Texas at San Antonio ¹	President	\$65,945	\$298,263	\$364,208
University of Texas at Tyler ¹	President	\$65,945	\$276,241	\$342,186
University of Texas—Pan American ¹	President	\$65,945	\$234,055	\$300,000
University of Texas at Brownsville ¹	President	\$65,945	\$231,780	\$297,725
University of Texas—Permian Basin ¹	President	\$65,945	\$230,455	\$296,400
Texas State—San Marcos ³	President	\$65,945	\$195,901	\$261,846
Texas A & M—Corpus Christi ²	President	\$65,945	\$195,145	\$261,090
Sam Houston State ³	President	\$65,945	\$175,046	\$240,991
Lamar University ³	President	\$65,945	\$174,371	\$240,316
Texas A & M International ²	President	\$65,945	\$174,395	\$240,340
Tarleton State ²	President	\$65,945	\$173,985	\$239,930
West Texas A & M ²	President	\$65,945	\$170,305	\$236,250
Sul Ross State ³	President	\$65,945	\$168,837	\$234,782
Angelo State ³	President	\$65,945	\$160,055	\$226,000
Texas A & M—Texarkana ²	President	\$65,945	\$158,425	\$224,370
Texas A & M—Commerce ²	President	\$65,945	\$138,186	\$204,131
Texas A & M—Kingsville ²	President	\$65,945	\$129,314	\$195,259

SOURCES:

1. Salary Supplementation Reports for September 1, 2009 to August 31, 2010. http://www.utsystem.edu/cont/Reports_Publications/SALSUP/2010salarysupl.pdf
2. Data for September 1, 2007 to August 31, 2008. <http://www.lightofdayproject.org/University/documents/NumbersandStats001.pdf>
3. Data as of June 2007. <http://www.lightofdayproject.org/University/documents/SalaryInfo001.pdf>

Table 13: Annual Salary of City Attorneys in the 20 Most Populous Texas Cities as of December 31, 2009

	2008	
	Population	Salary
Houston	2,242,193	\$170,890
San Antonio	1,351,305	\$181,664
Dallas	1,279,910	\$245,440
Austin	757,688	\$172,037
Fort Worth	703,073	\$189,600
El Paso	613,190	\$184,150
Arlington	374,417	\$166,253
Corpus Christi	286,462	\$74,280
Plano	267,480	\$173,786
Laredo	221,659	\$122,013
Lubbock	220,483	\$210,000
Garland	218,577	\$179,270
Irving	201,358	\$178,380
Amarillo	187,236	\$170,280
Brownsville	175,494	\$120,000
Grand Prairie	160,641	\$156,683
Pasadena	146,439	\$126,678
Mesquite	132,123	\$163,800
McAllen	129,776	\$172,266
Carrollton	125,595	\$159,008
<i>Average</i>	489,755	\$168,236
<i>Median</i>	221,071	\$172,037

SOURCE: Survey conducted by the Office of Court Administration.

The Commission had some difficulty in drawing specific guidance from this data, as the salaries vary significantly. For example, Dallas pays its city attorney \$245,440, while Houston pays \$170,890, and Lubbock pays \$210,000. Texas pays its own lawyer, the Attorney General of Texas, \$150,000, but pays the deans of its four law schools an average salary of \$314,221. As a result of the variability of the data, the Commission found this information to be helpful in a general, but not a specific, sense.

The most compelling data, however, came from a survey of salaries received by county court at law judges in Texas. As **Table 14** shows, the results of the survey revealed that:

- A county court at law judge in El Paso earns more than the Chief Justice of the Supreme Court and the Presiding Judge of the Court of Criminal Appeals.
- A county court at law judge in Hidalgo makes more than a justice on the Supreme Court or judge on the Court of Criminal Appeals.
- County court at law judges in Harris, Travis and Tarrant counties make as much as or more than a chief justice on the intermediate appellate courts.

**Table 14: Salaries of County Court at Law Judges
Compared to Salaries of Texas State Judges
as of December 31, 2009**

Judge	Salary	Salary with Supplement, if Relevant
County Court at Law Judge: El Paso	\$155,238	
Chief Justice of Supreme Court/ Presiding Judge of Court of Criminal Appeals	\$152,500	
County Court at Law Judge: Hidalgo	\$150,915	
Supreme Court Justice/ Judge of Court of Criminal Appeals	\$150,000	
County Court at Law Judge: Harris	\$144,204	
County Court at Law Judge: Travis	\$140,027	
County Court at Law Judge: Tarrant	\$140,000	
Chief Justice of Court of Appeals	\$140,000	up to \$147,000 with supplement
County Court at Law Judge: Bexar, Dallas, Jefferson, Lubbock, McLennan, Nueces, Williamson	\$139,000	
County Court at Law Judge: Collin	\$138,860	
County Court at Law Judge: Brazoria	\$137,500	
Court of Appeals Justice	\$137,500	up to \$145,000 with supplement
County Court at Law Judge: Denton	\$137,411	
County Court at Law Judge: Montgomery	\$135,000	
County Court at Law Judge: Webb	\$134,200	
County Court at Law Judge: Cameron	\$133,600	
County Court at Law Judge: Bell	\$133,528	
County Court at Law Judge: Fort Bend	\$132,296	
County Court at Law Judge: Galveston	\$131,849	
District Judge and Presiding Judge of Adm. Judicial Region or Presiding Judge of silica or asbestos multi-district litigation	\$125,000	up to \$173,000 with supplements
District Judge	\$125,000	up to \$140,000 with supplement

Factor 7: Other Factors Traditionally Considered

Survey of Attorneys

In August 2008, the Data Gathering Committee of the Judicial Compensation Commission asked OCA and the State Bar of Texas to conduct a survey of attorneys in the state concerning the major factors that play a role in their determination of pursuing or not pursuing a career as a judge.

The survey was developed by the Committee with assistance from OCA and sent by the Research and Analysis Department of the State Bar of Texas to 5,200 randomly selected attorneys. The survey was completed by 361 respondents, for a response rate of 6.9 percent.

Respondents were asked to rate a number of factors based on the type of influence they have in the person's decision to pursue or not pursue a career as a judge.

The election process was rated the biggest barrier to attorneys pursuing a career in the judiciary, and job security fell second.

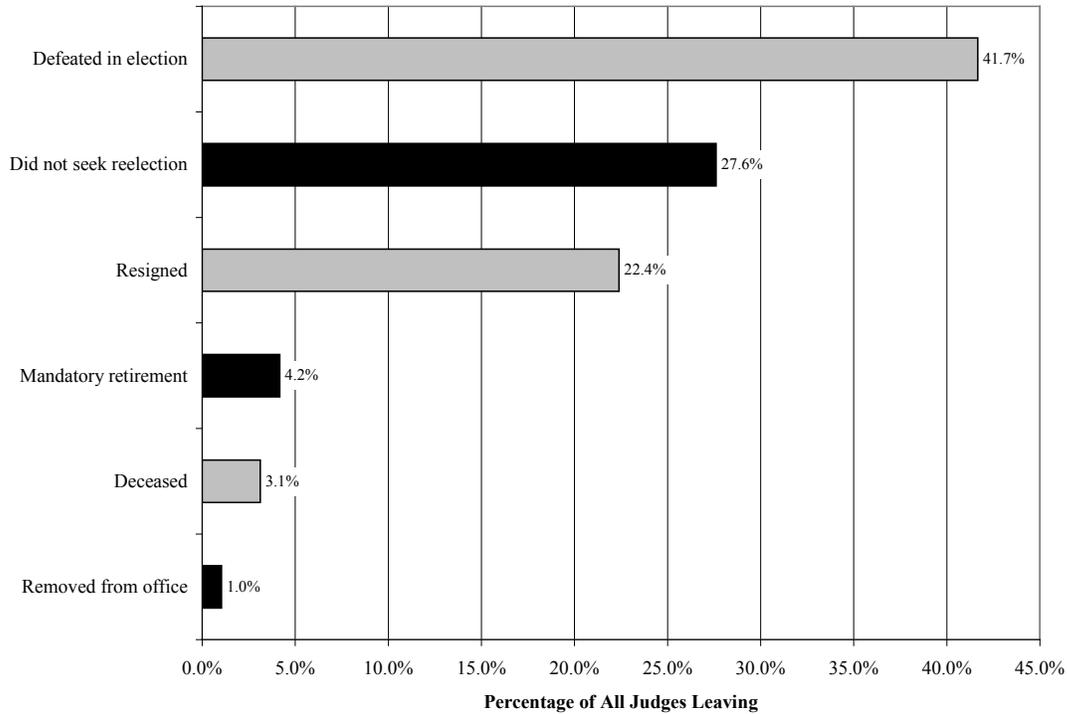
Regarding judicial compensation, respondents answered questions about the level of compensation that would be sufficient for them to personally consider running for the bench. Almost 70 percent said they would not consider running for the highest court at current salary levels. Slightly more than half said they would not consider running for the intermediate appellate courts at current salary levels. Forty percent said they would not consider running for a district bench at current levels. These responses are particularly interesting in light of another finding of the survey—namely, that a majority of those responding either definitely wanted to be a judge or were considering being a judge.

Judicial Turnover

To provide the Legislature with information to facilitate legislation that ensures that the compensation of state judges is adequate and appropriate, the 79th Texas Legislature charged the Office of Court Administration (OCA) with collecting information related to state judicial turnover. Section 72.030 of the Texas Government Code requires OCA to obtain data on the rate at which state judges resign from office or do not seek re-election, as well as the reason for these actions. The results for fiscal years 2004 to 2005, 2006 to 2007, and 2008 to 2009 are published on OCA's website at <http://www.courts.state.tx.us/pubs/jud-turnover-reports.asp>.

From September 1, 2003 through August 31, 2009, 192 judges and justices who served in the state's appellate and district courts left the state judiciary. As **Figure 9** shows, half (96 judges) of these judges left voluntarily (did not seek reelection or resigned while in office).

**Figure 9: Manner in Which Judges Left State Office
September 1, 2003 through August 31, 2009**

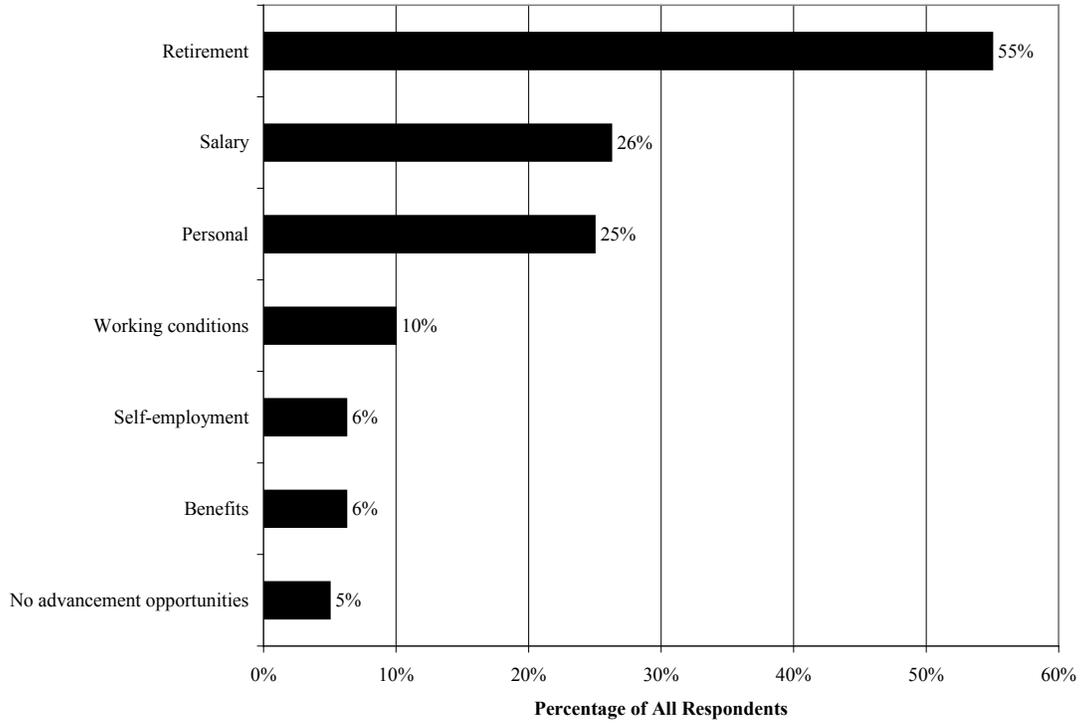


More than half of the judges who left the judiciary voluntarily indicated that retirement influenced their decision “to a very great extent.”¹⁴ Twenty-six (26) percent of judges noted that salary strongly influenced their decision, and 25 percent indicated that personal reasons were a major factor, as **Figure 10** indicates.

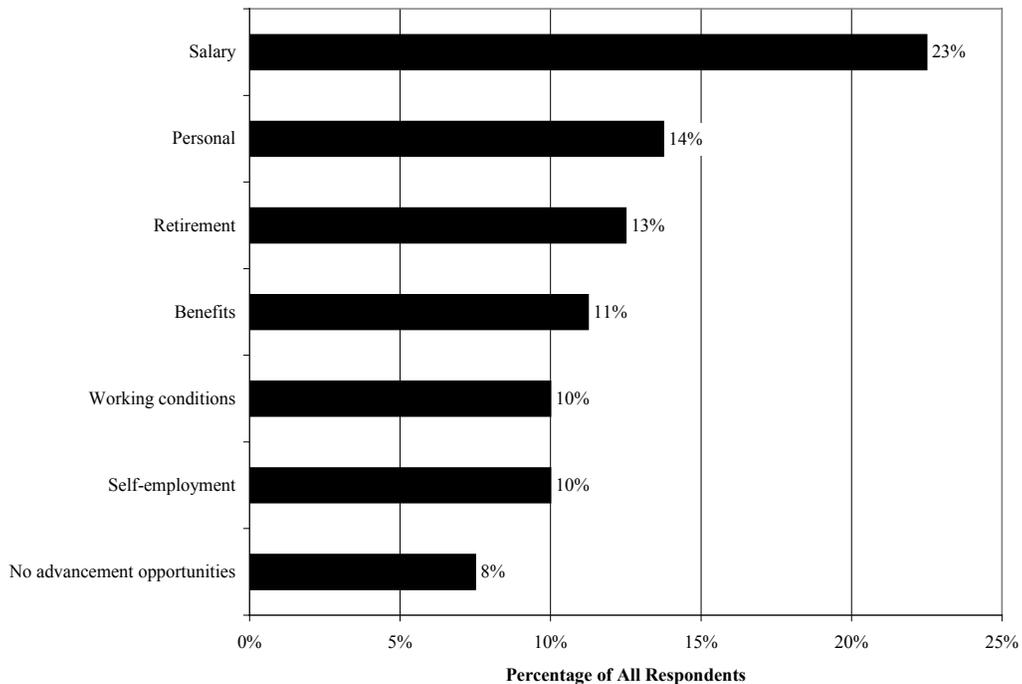
While “retirement” was the most frequently selected factor that influenced “to a very great extent” judges’ decision to leave, salary was the most frequently selected factor that influenced their decision “to some extent.” As **Figure 11** shows, nearly one-quarter (23 percent) of judges indicated that salary, if not the most important factor, was certainly a consideration in their decision to leave.

¹⁴ These results represent 80 of the 96 judges (83 percent) who left the judiciary voluntarily who responded to the judicial turnover survey. Respondents were able to select more than one factor.

**Figure 10: Factors Influencing “To a Very Great Extent”
Judges’ Decision to Leave the Judiciary
September 1, 2003 through August 31, 2009**



**Figure 11: Factors Influencing “To Some Extent”
Judges’ Decision to Leave the Judiciary
September 1, 2003 through August 31, 2009**



Factor 8: Level of Overall Compensation that is Adequate to Attract the Most Highly Qualified Individuals, from a Diversity of Life and Professional Experiences, to Serve in the Judiciary Without Unreasonable Economic Hardship and with Judicial Independence Unaffected by Financial Concerns

The Commission viewed the analysis required by the first seven factors to be relevant to the analysis of the last factor. Based on all of that analysis, the Commission concluded that an adjustment in compensation is necessary and appropriate in order to seek to attract the most highly qualified individuals.

As noted in the Executive Summary and in the discussion of Factor 4, salaries of lawyers vary widely and can reach ranges that are many times that paid for judicial service. Given this reality, it must be recognized that many highly-qualified lawyers in Texas will see service as a judge as a substantial economic sacrifice. This is demonstrated by the 2008 survey of lawyers discussed in Factor 7. While the majority of those responding were considering being a judge, a large majority said they would *not* consider running for the high court at present salary levels (with a majority and 40 percent, respectively, saying they would not run for an intermediate appellate or district bench at current compensation levels). All of the public comments obtained by the Commission, in fact, advanced the view that judicial compensation was still insufficient and needed to be increased.

V. Conclusion

The Commission concluded, based on its evaluation of the factors, that it is necessary and appropriate to adjust judicial salaries and recommends that salaries be established as shown in **Table 15** for the 2012-2013 biennium:

Table 15: Recommended Judicial Compensation

Judge	State Salary	Additional Compensation	Total	% Increase Above Current Total Compensation
Supreme Court Chief Justice / Court of Criminal Appeals Presiding Judge	\$168,000	n/a	\$168,000	10.2%
Supreme Court Justice / Court of Criminal Appeals Judge	\$163,000	n/a	\$163,000	8.7%
Court of Appeals Chief Justice	\$153,000	up to \$7,500	\$160,500	8.8%
Court of Appeals Justice	\$148,000	up to \$7,500	\$155,500	7.2%
District Court Judge	\$133,000	up to \$15,000	\$148,000	5.7%

The recommended increase for a high court justice or judge is set at the lower end of the targeted range of salaries. To have a salary that is second-highest among the most populous states in the country, the salary could be set anywhere from \$162,702 to \$181,704. Even that scale is conservative compared to that of federal appellate judges.

The Commission chose a conservative number as a result of balancing a number of factors. One of the most important factors was maintaining a structural balance, or differential, between the high, intermediate and district courts. Not only is that concept embedded in the governing statutes, but stakeholders consistently stressed the importance of keeping the respective salaries of judges in a relative balance to each other.

The amount of the differential is a matter of some debate. Texas law provides that the state salary of an intermediate appellate justice should be exactly ten percent higher than that of a district judge, and the state salary of a high court judge or justice should be exactly 20 percent higher than that of a district judge.¹⁵

Texas law also provides a salary differential among the three levels of state courts based on their *total* salary, including county salary supplements. The supplemented salary of a district judge must be at least \$5,000 less than the salary an intermediate appellate justice, which in turn must be at least \$5,000 less than the salary of a high court justice or judge. This \$10,000 range constitutes a seven percent spread in salaries. This compares to a 23 percent spread for the federal judicial system and a median of 16 percent for the nine most populous states other than Texas.

The Commission is recommending a \$15,000 spread between the highest and lowest salaries, including supplements, an amount approximately equivalent to ten percent. This spread is between the two markers currently set out in Texas law for the judicial state salaries. However, **the following statutory changes are required to implement the Commission’s salary recommendations:**

1. Section 659.012(a)(3) should be amended to provide that a justice of the supreme court, other than the chief justice, and the judges of the court of criminal appeals, other than the presiding judge, are entitled to a salary from the state “that is at least equal to 120% but does not exceed 123%” of the salary of a district judge;
2. Section 659.012 (a)(2) should be amended to provide that a justice of a court of appeals, other than the chief justice, is entitled to a salary from the state “that is at least equal to 110% but does not exceed 113%” of the salary of a district judge;
3. Section 659.012 (a)(1) should be amended to provide that the combined salary of a district judge from state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$7,500 less than the salary provided for a justice of a court of appeals other than a chief justice;
4. Section 659.012 (a)(2) should also be amended to provide that the combined salary of a justice of a court of appeals other than the chief justice from all state and county

¹⁵ See Section 659.102 (a) of the Government Code.

sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$7,500 less than the salary provided for a justice of the supreme court; and

5. Section 659.012(a)(4) should be amended to increase the supplement for the chief justice or presiding judge of an appellate court to \$5,000 more than the salary of the other justices or judges on the court.

The Commission wishes to stress that the recommended compensation numbers are presented as a whole because, as the analysis above shows, the numbers are interdependent. If, for any reason, one of the numbers is adjusted, the other numbers would need to also be evaluated.

The Commission also stresses that future gradual biennial adjustments based on cost of living increases due to inflation are an important part of maintaining and attracting top talent to the bench.

Appendix A: Minutes of Commission Meetings



Texas Judicial Compensation Commission

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625 • FAX (512) 463-1648
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

CHAIR:
BILL STRAWN

Meeting Minutes
January 20, 2010, 10:00 a.m.
Office of Court Administration
6th Floor Conference Room, 205 West 14th St.
Austin, Texas

Members in Attendance:

Bill Strawn, Chair
Tommy Harwell
Cruz Hernandez
Harold Jenkins
Patrick Mizell
Paul Bane Phillippi (via phone)
Wanda Chandler Rohm
Linda Russell
Michael Slack

Guests:

Robert Fillmore, 5th Court of Appeals
KaLyn Laney, Texas State Bar
Alice McAfee, Supreme Court
Lynn Nabers, Strategic Partnerships Inc.
Shack Nail, Employees Retirement System of Texas
Cory Pomeroy, Senator Robert Duncan's Office
Mike Schofield, Office of the Governor

OCA Staff:

Carl Reynolds, Administrative Director
Angela Garcia, Judicial Information Manager
Amanda Stites, Judicial Information Analyst
María Elena Ramón, General Counsel
Glenna Bowman, Chief Financial Officer

I. Welcome and Introduction

Mr. Strawn called the meeting to order at 10:00 a.m. Commission members were introduced. Mr. Strawn gave recognition and thanks to former chair, Elizabeth Whitaker, for her work. Attending OCA Staff were introduced.

Mr. Strawn referred to the judicial salary statistics in the National Center for State Courts' [Survey of Judicial Salaries](#). For the fifty states and the District of Columbia, there was an average annual salary increase of 2.5 percent in 2007, 2.8 percent increase in 2008, and no increase in 2009. Fifteen states saw reductions in salaries in 2009. The last salary increase for Texas judges was in 2006.

II. Attendance of Members

Mr. Reynolds called roll and, with 100 percent of the members attending, the legal requirements to hold the meeting were met.

III. Legislative Update

Mr. Reynolds introduced and welcomed the guests attending.

Mr. Reynolds announced that budgets are being cut throughout state government and the court system. All Texas agencies are asked to reduce their budgets by 5 percent for this biennium. He also reported that the 81st Legislature resulted in a few laws related to judicial compensation.

- HB 765—Requires commissioners court to pay certain judges of statutory probate courts benefit replacement pay and longevity pay under the same conditions and in the same amount as district judges. See §25.0023, Gov't Code.
- SB 497—Changes the fixed rate of a judge or justice's monthly longevity pay from \$20 for each year of service (maximum of 16 years of service) to 3.1 percent of the judge's monthly salary. See §§26.006, 659.0125, 659.0445, Gov't Code.
- SB 2298—Provides that a retired judge appointed to a multidistrict litigation pretrial court is entitled to receive the same compensation and benefits to which a district judge is entitled. See §659.0125, Gov't Code.

IV. Review of Commission Mission and Recommendations from Last Report

Mr. Strawn reviewed the Commission's mission and recommendations from the Commission's December 1, 2008 Report to the Texas Legislature (2008 Report). The factors required to be considered by the Commission were reviewed:

- the skill and experience required of the particular judgeship at issue;
- the value of compensable service performed by justices and judges, as determined by reference to judicial compensation in other states and the federal government;
- the value of comparable service performed in the private sector, including private judging, arbitration, and mediation;
- the compensation of attorneys in the private sector;
- the cost of living and changes in the cost of living;
- the compensation from the state presently received by other public officials in the state, including:
 - state constitutional officeholders;
 - deans, presidents, and chancellors of the public university systems;
 - and city attorneys in major metropolitan areas for which that information is readily available;
- other factors that are normally or traditionally taken into consideration in the determination of judicial compensation; and
- most importantly, the level of overall compensation adequate to attract the most highly qualified individuals in the state, from a diversity of life and professional experiences, to serve in the judiciary without unreasonable economic hardship and with judicial independence unaffected by financial concerns.

Mr. Strawn referenced the recommended salary increases presented in Table 1: Recommended Judicial Compensation on Page 3 of the 2008 Report. Substantial increases were recommended for the higher courts.

Mr. Slack commented that all the recommendations were not considered by Legislature. Mr. Mizell added the recommendations were written before the fall of the economy. It was not a reflection of the Legislature's position on the issues, but a reflection of economic hardship.

Mr. Reynolds pointed out point number 3 on page 2 of the 2008 Report as the long-term solution for regular salary adjustments. This point states that anticipating regular adjustments is one of the most important policy goals to be achieved for Texas judicial salaries.

Mr. Slack agreed that the previous work and recommendations of the commission are still relevant; however, the data may need to be updated with current figures.

Ms. Rohm suggested that the number one objective be the removal of the link between judicial and legislative salaries.

V. Review of Current Judicial Retirement Systems

Mr. Strawn introduced Shack Nail, Director of Governmental Relations, Employees Retirement System (ERS). ERS administers the state employee pension plan and health plan.

Mr. Nail stated that ERS projects a \$150 million shortfall in the health plan. Because there cannot be a reduction in pension benefits, the mandated 5 percent cutbacks fall on healthcare benefits. Currently, the health plan premium is covered 100 percent for state employees and 50 percent for dependents.

Review of ERS pension plans:

Judicial Retirement System (JRS) I

- active for only 23 remaining members enrolled before 1985;
- no trust or investments;
- legislature has to appropriate funds for each year (pay-as-you-go system);
- plan automatically adjusts with cost of living.

Judicial Retirement System (JRS) II

- enacted as of 1985 to replace JRS I;
- is a trust with investments;
- no automatic cost-of-living adjustment; COLA depends on Legislature.

Current members of JRS II would like to amend their plan to include automatic cost-of-living adjustments. This would require legislative approval. As the number of members of JRS II increases, any cost-of-living adjustments will be increasingly expensive. Mr. Nail suggested that automatic cost-of-living adjustments would likely require the state's portion of the funding (currently 16.82 percent) to double.

Mr. Harwell inquired if JRS I was untouchable politically. Mr. Nail responded that the plan was difficult to challenge and there are no plans to change it.

ERS is currently reviewing budgets and looking at a large deficit. The entire judicial budget is a very small portion of the overall state budget.

Mr. Nail suggested that the Commission request a representative from the county/district retirement system to provide information on that plan. He noted that an increase in district judges'

salaries will result in an increase in retirement costs of retired judges and in an increase in the elected class salaries. There is a political issue involved with elected officials voting to increase judges' salaries, which in turn, would raise their own salaries.

VI. Discussion/Recommendations for Further Study

Mr. Strawn noted that the committee structure used previously worked well and he would like to use the same structure, including the subcommittees: Public Comment Committee and Fact Gathering Committee.

Mr. Strawn referred to page 6 of the 2008 Report regarding Other Issues for Future Study. The longevity pay calculation for judges has changed from a fixed rate of \$20 for each year of service (maximum of 16 years of service) to 3.1 percent. There is no material financial difference resulting from this change.

Mr. Slack stated he would like to revisit the linkage between judicial and legislative compensation. Ms. Rohm suggested that it is a good time to find representatives to write and support a bill in the next session changing the link between judicial and legislative compensation. Mr. Strawn agreed. While the official deadline for the Commission's report is no later than December 1, 2010, a deadline of October 15, 2010 was set so that it will be available for next session.

VII. Committee Assignments

Mr. Strawn asked for a volunteer to head the public comment subcommittee. Mr. Slack, the previous head of the public comment subcommittee, agreed to serve again. The subcommittee will review compensation linkage and the regularity of compensation increases.

Mr. Strawn would like to review the results of the last compensation survey conducted by the State Bar. Mr. Mizell stated that he anticipates a decrease in compensation resulting from the change in the economy. Mr. Slack stated that compensation at small-to-medium sized firms is more likely to see an impact than compensation at larger firms.

Mr. Reynolds proposed a case study to analyze opportunity costs over ten years of judges on the bench vs. private practice. Mr. Strawn proposed that the case study project should be reviewed by both subcommittees.

Ms. Rohm requested background information on the linkage of elected salaries to judicial salaries. Ms. Ramon will provide legislative history on this issue.

Mr. Mizell volunteered to head the fact-gathering subcommittee. Mr. Strawn accepted.

Mr. Strawn called for draft reports from each subcommittee to be available for review by July 15, 2010. There will be a final commission meeting in September, and the final report will be due October 15, 2010. Subcommittee membership was determined.

Public Comment Committee: Michael Slack, Chair; Wanda Chandler Rohm; and Linda Russell

Fact Gathering Committee: Patrick Mizell, Chair; Harold Jenkins; Paul Bane Phillippi; and Tommy Harwell

VIII. Other Business

Ms. Garcia is the primary OCA contact for the Commission. Mr. Reynolds recommended that members and guests review the [Commission's website](#) for updates and contact information.

IX. Adjournment

Mr. Strawn made a motion to adjourn at 11:20 a.m. Ms. Rohm seconded the motion.



Texas Judicial Compensation Commission

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P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

CHAIR:
BILL STRAWN

**Public Comment Committee Meeting
April 15, 2010, 10:00 a.m.
Texas Law Center
1414 Colorado Street
Austin, Texas**

Members in attendance: Michael Slack, Committee Chair
Bill Strawn, Commission Chair
Cruz Hernandez
Wanda Chandler Rohm

OCA Staff: Carl Reynolds, Administrative Director
Angela García, Judicial Information Manager
María Elena Ramón, General Counsel
Glenna Bowman, Chief Financial Officer

I. Welcome and Introduction

Mr. Slack called the meeting to order at 10:00 a.m.

Remarks by Chair

Mr. Slack reminded attendees of the 2008 Report to the Texas Legislature issued by the Judicial Compensation Commission on December 1, 2008 (available at <http://www.courts.state.tx.us/oca/jcc/pdf/LegReport-120108.pdf>). Mr. Slack invited comments on the report.

The purpose of the Public Comment Committee meeting is to gather public comment on compensation of state judges.

Two letters of written testimony addressing judicial compensation issues were included in the information provided for board members. The testimony was submitted by:

- Judge Robin Sage of the 307th Family District Court in Longview, TX.
- Judge Len Wade of Kelly Hart & Hallman LLP, former judge of the 141st District Court in Tarrant County.

Mr. Slack mentioned the New York Court of Appeals decision (*Maron v. Silver*, which can be accessed at <http://www.nycourts.gov/ctapps/decisions/2010/feb10/16-18opn10.pdf>) that found that the independence of the judiciary is improperly jeopardized by the current judicial pay crisis, which constitutes a violation of the Separation of Powers doctrine. The Commission has asked the Office of Court Administration for an analysis of this decision to determine if it has relevance to Texas law linking judicial compensation to legislative compensation.

Public Comment

Roland Johnson, President of the State Bar of Texas, stated that the current economic times have hit both the legal profession and citizens hard. The State Bar of Texas will lobby in Washington, DC for funding for those who cannot afford representation. Judicial compensation is directly related to access to justice. If courts are not adequately funded, there will be a breakdown of citizens' ability to seek redress. We will lose our deepness in decision making and knowledge, and the quality and skill needed in the judiciary. The public needs confidence in judges' abilities.

The State Bar of Texas is currently conducting its biennial salary survey of Texas lawyers. The survey deadline is April 28.

Justice Jim R. Wright, representing the Council of Chief Justices, gave his approval and thanks for the 2008 Judicial Compensation Commission report. Justice Wright indicated that he agrees with State Bar of Texas President Johnson regarding the importance of retaining quality judges and that it becomes an access to justice issue. He indicated that it will be difficult to catch up compensation levels all at once, but compensation will continue to fall further behind if that doesn't happen. Justice Wright stressed the importance of stopping the revolving door of judges.

Pamela Madere, representing the Texas Association of Defense Counsel (TADC), stated that TADC understands the importance of fair and adequate compensation for judges to improve the administration of justice. TADC believes that the state needs to develop a system for adequate compensation of judges and that judicial compensation should not be linked to legislative compensation. The judiciary must remain an independent and co-equal branch. Mr. Slack invited TADC to analyze the New York decision and the judicial-legislative compensation linkage issue. Ms. Madere indicated the TADC will take a look at the New York decision and report back. TADC also submitted written testimony.

Judge Daniel Robles, a retired judge from Cameron County, presented his experience of how a judge feels when serving his community. Judge Robles, elected in 1999, stated that he enjoyed his time on the bench. With children entering college, he needed to go into private practice. Since retiring from the bench, he has doubled his salary. If he could have had a salary increase, he would have been happy to stay on the bench. Stepping down was a tough decision for Judge Robles but necessary for his family.

Mr. Slack asked if Judge Robles received a county supplement while serving in Cameron County, and Judge Robles stated that he did receive a supplement. Mr. Slack noted that a total compensation amount of \$148,000 was recommended in 2008 and asked Judge Robles if, after adjusting for inflation, that amount is enough to keep judges with family considerations. Judge Robles replied that \$148,000 is still too low.

Mr. Slack then asked Judge Robles if the federal judicial compensation levels are closer to what state compensation levels should be. Judge Robles replied that yes, federal levels are closer to what is needed. Mr. Strawn asked Judge Robles for a personal recommendation on salary levels. Judge Robles indicated that he will provide input on his recommendation at a future time after he has reviewed the data, including federal compensation levels.

Mr. Slack stated that the committee has a concern regarding recommending a large compensation increase all at once. However, the incremental approach toward salaries didn't get very much attention in 2008, and perhaps it is time to go for a "home run." Mr. Strawn and Mr. Slack repeated their entreaties to receive this kind of specific information from Judge Robles and the other judges present.

Judge Lori Massey, Ford & Massey PC, former judge of the 288th District Court in Bexar County, provided background about her personal experience as a judge who stepped down from the bench. Judge Massey was appointed by Governor Rick Perry in 2003 but stepped down to start a San Antonio law firm in 2008. She stated that she knew she would take a 30 to 40 percent cut when she decided to become a judge, but she thought that the cut was worth it at the time. She has four children and a husband in a management position who cut back his hours to adjust for the demands of her schedule as a judge. Judge Massey emphasized that she was not an 8-to-5 judge and worked hours similar to those she would work in the private sector. She was active in the community, particularly at the family court level, plus she had to campaign. In 2008, Judge Massey said that her children were facing college and she could no longer bear the financial sacrifices she had made previously. She almost doubled her income by moving to private practice.

Judge Massey also believes it is important to attract judges to the bench at age 40 or 50, rather than at the end of their careers, and potentially have them serve for 20 years. Citizens benefit from continuity and consistency in the law. Judge Massey said there is currently just enough financial incentive for those struggling in private practice to run for the bench but not enough incentive for those who are already successful. It is difficult to attract and retain very productive attorneys.

Judge Massey suggested a base rate of \$150,000 and to allow counties to make up the difference to approximately \$170,000. She also suggested that longevity bonuses be given to judges like they are given to other state employees and suggested that the Commission explore other benefits such as tuition waivers or scholarship or grant programs for judges with children in college since many judges who are 40 to 50 years of age have children.

Ms. Rohm asked Judge Massey if she believes judges should be elected. Judge Massey stated that she has mixed emotions on that subject and gave several examples of judges in Bexar County who she felt were elected under less than ideal circumstances. Judge Massey indicated that she likes the idea of retention elections.

Ms. Rohm stated that, as a small business owner in San Antonio, she often lacks sufficient information about judges when it comes time for elections. Ms. Rohm stated that speakers who gave public comment should write letters to the Commission as a follow up stating why they had to retire and provide specific information. She suggested that a survey be conducted to determine why judges left the bench.

Judge Craig Smith, 192nd District Court in Dallas County, reported that he had recently met with 37 district judges who asked that he represent them to this Commission. Judge Smith stated that Judge Massey is the "poster child" for a big city judge. Judge Smith said that he understands serving as a judge requires an acceptance of sacrifices and a love of public service but that family becomes a priority. Twenty-five of the 37 judges in Dallas County have children. College is a significant issue and becomes a barrier for judges to be able to take care of their families.

Mr. Slack stated that Judge Smith has two children in college and one in high school yet is currently serving as a judge. Judge Smith stated that his situation is different than the judges who had previously spoken because he was in private practice until four years ago. Judge Smith stated that retaining judges should be a goal of judicial selection, which would attract a better quality of judge and maintain stability in the judiciary. Mr. Slack asked Judge Smith if he would compare his circumstance to Judge Robles. Judge Smith said that most judges fall into the 43-55 age range and that judges leave because of family financial demands.

Mr. Slack asked if there is a judicial selection commission or task force. Mr. Reynolds stated that two groups—the Judicial Council and the Senate Jurisprudence Committee—are looking at the issue, but there is no state commission.

Justice Bud Arnot, retired Chief Justice of the 11th Court of Appeals, stated that it was his privilege to serve the state of Texas. Justice Arnot gave his background: he was appointed to the bench at age 35 and was aware of the sacrifices he was making at that time. He left the bench 20 years later with “no savings, no toys and debt” from educating three children. He stated that his children had strong academic scores and backgrounds but did not qualify for any need-based financial aid.

Justice Arnot stated he has attended many budget meetings for the House and Senate over his 20 years of service and belt tightening was always suggested by a new legislator. Justice Arnot stated that the problem with making a big leap to \$148,000 will be those who ask: “What are you going to do with the big raise I gave you?” Justice Arnot stated he had two raises in 20 years, which amounted to less than 20 percent, and that salary increases have not kept up with inflation. He said that after taxes, money taken out for retirement, and other fees, the amount is smaller than it seems. He stated that the committee needs take into account the rising cost of living. In addition, he noted that college is very expensive. Although state universities are a relative bargain, there are also related costs such as room, board and supplies.

Justice Arnot stated that he left the bench because he had no way to augment his salary except by teaching, he did not anticipate another raise, and his retirement benefits were not going to get any better. He said the committee must also weigh salary costs against the time and money the state spends on educating judges. The cost of judicial elections is also a factor. In rural counties, judges often pay for election costs out of their own pockets. In the larger areas, buying media time is extremely expensive.

He stated that there will always be some who will be attracted to public service, but the state will be unable to keep them without better compensation. Judges are highly educated and must have a lot of experience before they even become judges. Judicial compensation is a tiny part of the budget. Justice (decisions about person, property or liberty) should never be based on finance.

Justice Arnot said that it is an outdated way of thinking to compare the salaries of first year lawyers in large firms to judicial salaries because first year lawyers are overpaid and their work is unrelated to the work and value of a judge. Justice Arnot asked that the committee consider the judicial compensation in the 5 largest states as a basis of comparison. He also noted that when too much time passes between raises, it becomes difficult to pass “big catch ups.”

Mr. Slack asked if Justice Arnot would support a recommendation by the Commission to abolish the linkage between judicial and legislative compensation, particularly because the issue of legislators increasing their own compensation always appears in media stories. Justice Arnot stated that he would support that recommendation. Justice Arnot stated that every court level should be compensated on the basis of the work done, not based on the current practice of determining salary by using an index between the 3 levels state judges.

Mr. Slack said that the linkage between judicial and legislative compensation remains hugely problematic. Mr. Strawn stated in the 2008 Judicial Compensation Commission Report that Texas judicial compensation was in line with judicial compensation in New York and Florida, except in the higher court of appeals. He also stated that he was surprised by the large number of judges in the 55 to 70 year age range and that the compensation issue is related to the age of judges.

Justice Arnot stated that Texas compensation is diluted when accounting for cost of living. He added that salaries figures from the different states are not comparable because the circumstances in each state are different. Judges in New York, for example, have car allowances and other allowances. Campaign and other costs also differ between states.

Judge Rodolfo Delgado, 93rd District Court in Hidalgo County, spoke about his medical concerns in relation to compensation. As a cancer survivor, he is forced to stay because of his health insurance needs. He had originally intended to leave the bench because of the compensation.

Justice Linda Thomas, retired Chief Justice of the 5th Court of Appeals, stated that judges received a nice raise in 2005 but the compensation level was only brought up to where it would have been if they had received regular increases, so it didn't represent a real increase. The compensation level is still not where it should be. Justice Thomas stated that in 1979 and the early 1980s, the judges were given cost of living increases then the regular increases stopped. Justice Thomas stated that the incremental approach to compensation had been tried before. She suggested that where the Commission stopped with the last recommendation in 2008 should be the minimum starting point for this year's recommendation.

Justice Thomas asked that the Commission not look at counties to make up a significant portion of judges' increase in salary, which would result in disparities across the state, particularly because counties are in financial trouble as well and will vary in their ability to pay. Justice Thomas said that comparisons to other states, as Justice Arnot suggested, are troublesome because such comparisons do not account for perks in other states or circumstances such as appointments for life. She also disagreed with Justice Arnot on the indexing between different levels of the court. Justice Thomas recommended that the indexing system be maintained because there are significant differences between the court levels and the system has worked well. She asked the Commission to make sure that it recommended raising salaries for all 3 court levels.

In reference to recruiting and retaining judges, Justice Thomas stated that judges leave the bench for private practice due to the sacrifices and family commitments already discussed by the other speakers. Justice Thomas mentioned that she has recently discovered work as a brief consultant pays as well as the serving on a Court of Appeals.

Mr. Slack asked if the county supplements at the district court level should be reflected in the recommendations for state-based compensation. Justice Thomas replied that district judges should be paid by the state, and that such compensation should remain a state responsibility. Because of county supplements, there is currently a salary disparity between judges that are doing the same work. However, she noted that the Commission needs to be careful to examine how this would affect judges that have been in the county system for a long time. They should be allowed to retain some county benefits (insurance is often better in the county systems) and remain in the county retirement system.

Justice Thomas said that retirement pays more than what is made while serving on the bench. She stated that in her case, it amounts to \$5,000 more per month. She asked the Commission to explore the idea of allowing judges to draw retirement but remain on the bench.

Judge Steve Smith, 361st District Court in Brazos County and chair-elect of the State Bar's Judicial Section, stated that predictability is very important and is needed. He said that there is no pattern to the years when compensation levels are raised. All employees should have some sort of predictable system for increases. Judge Smith said that the recommendation for a reasonable salary take into account the amount of time judges spend outside the courtroom, including after hours and on weekends, performing legal research and preparing for court. He agreed with Judge Massey's statement that being a judge is not an 8-to-5 job. He teaches a college course to supplement his salary, and he almost took a federal job because it paid \$21,000 more.

End of public testimony.

The Committee members thanked those who spoke for their comments and participation. Mr. Strawn added that the committee hopes to strategize for larger impact in the next legislative session.

Mr. Slack said that a legal analysis of the New York decision will be forthcoming, along with the requested input from TADC. Mr. Slack stated that he welcomed other comments to the report.

Adjournment

At noon, Ms. Rohm made a motion to dismiss. Mr. Strawn seconded.



Texas Judicial Compensation Commission

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CHAIR:
BILL STRAWN

Meeting Minutes
July 16, 2010, 10:00 a.m.
Texas Law Center
1414 Colorado Street
Austin, Texas

Members in Attendance:

Bill Strawn, Chair
Tommy Harwell
Cruz Hernandez
Patrick Mizell
Wanda Chandler Rohm
Michael Slack

Guests: Ben Woodward, 119th District Court Judge

OCA Staff: Carl Reynolds, Administrative Director
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María Elena Ramón, General Counsel

I. Welcome and Introduction

Mr. Strawn called the meeting to order at 10:00 a.m. He thanked Mike Slack for his work on the Public Comment Committee and Pat Mizell and Angela Garcia for their work on the data-gathering committee.

II. Attendance of Members

Six committee members attended, which provided the necessary quorum for the meeting.

III. Approval of January 20, 2010 Meeting Minutes

Mr. Hernandez moved to approve the minutes of the January 20, 2010 meeting, Mr. Slack seconded the motion, and the January 20, 2010 meeting minutes were approved.

IV. Public Comment

Judge Woodward of the 119th District Court in San Angelo spoke to the Commission about the effects that becoming a judge has on an individual's income that are not always recognized by the public or appreciated by the Legislature.

“People want to do business with their leaders; individuals want to buy their car or insurance from their Representative, or retain their Senator to represent them as a lawyer. This is accepted because people naturally want to do business with their leaders and because our leaders are usually the best in their respective businesses. While our Representatives must sacrifice greatly to serve the citizens, they nevertheless may receive some financial benefits. These ordinary business relationships are neither illegal nor unethical, but they are not permitted in the judicial branch of government.

Our Judiciary must be fair and impartial. We expect Judges to make decisions based on law enacted by our representatives. “Judges should follow the law, not make law.” Judges are not to allow political influence, personal relationships or personal benefit affect their decisions. These characteristics of the Judiciary are required by our unique American form of government which is based on law, rather than the edicts of a dictator or commands of a military regime.

Because Judges are guardians of the law, it is not enough that judges make decisions for the right reasons. It is also imperative that citizens perceive that Judges make decisions for the right reasons. The public must have confidence in the Judiciary, because if people lose confidence in the Judiciary, they will lose faith in the law, and then lose respect for our form of government.

The requirements to avoid wrongful influences and to maintain public confidence, call for Judges to operate under different ethics than those of the other branches of government. These ethics are in part reflected in the Code of Judicial Conduct. Canon Two of that Code provides that a Judge shall not allow any relationship to influence a judge's conduct or judgment, and the Canon prohibits a Judge from using the prestige of judicial office to benefit self or others. Canon Four requires Judges to restrict their outside activities so as not to interfere with the proper performance of their duties.

These abstract principles have a real impact on a Judge's income. We want judges to have experience and be good lawyers. Therefore most will have solid careers in law with many well-paying clients who the lawyer developed over years of hard work. Many are partners with other lawyers, and the partnership may own the office building where the lawyers are located or perhaps own other business interests, such as a Title Insurance Company. Many lawyers are Board Certified in a particular field of law and most are leaders, involved in their community by serving on charitable boards, often a source of business.

When a lawyer becomes a Judge, the new judge must cease practicing law, so those loyal clients the lawyer developed will redirect their loyalty to another attorney. The new judge must withdraw from law partnerships because continuing to practice would interfere with judge's duties and continuing in partnership with other lawyers would give the perception that the former partners have undue influence on the judge. For the same reasons, the new judge must sell any interest in real estate partnerships with other lawyers, as well as sell the title company or other business interests that would conflict with judicial duties. Because often a Judge does not concentrate 40% of time to a particular area of law, the Judge must relinquish Board Certifications of special competence. And a Judge cannot serve on charitable boards if the time commitment interferes with judicial duties or if the charity regularly comes before the Court."

Judge Woodward also gave a summary of his personal experience:

- In June 1999, he was in private practice in San Angelo. He was a law firm partner, owned real estate, and a title insurance business. He was board certified in three areas of real estate law and served on the board of the largest health care system in San Angelo. He added that serving on the board of the health care system was an outlet for public service, but that he often encountered many doctors who were in need of legal representation.
- In July 1999, Judge Woodward was appointed to the bench by Governor George W. Bush and gave up his clients, partnership, resigned his specialty certification, sold his interest in the real estate partnership, and sold his interest in the title company. He also resigned from the health care system board.

Judge Woodward stated that he knew clearly what he was doing when he took his position as a judge. "By becoming a judge, a lawyer relinquishes many opportunities for income and investment. But judges accept these restrictions because judges understand how essential their service is to government and the American way of life. The Legislature, in turn, must recognize the important role the Judiciary plays in our unique form of government. The Legislature must recognize its obligation to attract very capable, honest, experienced lawyers to the bench. A fair salary is necessary and when the Legislature deliberates about what is a fair salary, the Legislature should recognize the financial impact judicial service has on an individual."

He thanked the committee for their service and asked that they set a fair and reasonable salary for the third branch of government.

Mr. Strawn thanked Judge Woodward for his comments.

V. Committee Reports

Public Comment Committee

Mr. Slack presented the meeting summary received by Commission members, which reviewed the public comments provided by judges. Most of those who spoke agreed that the 2005 salary increase did not "catch up" judges' compensation. Mr. Slack said Judge Woodward's comments were representative of

what was heard in the last meeting. He reminded those present that the Commission is advisory only; it takes legislators to act.

Mr. Strawn asked for questions or comments to Mr. Slack's summary. There were none.

Fact Gathering Committee

Mr. Mizell presented for the Fact Gathering committee, which compiles and analyzes data that the Commission is statutorily required to review and consider.

Mr. Mizell stated that Texas judges' compensation levels are behind in every category. There are assumptions that judicial compensation levels will never match those of private sector attorneys yet the state still wants to attract well qualified judges. The benchmark being used is that Texas should rank second in compensation levels compared to the judicial salaries in other states because Texas is the second most populous state. Mr. Mizell added that this ranking is based on salaries adjusted by a cost of living factor used by the National Center for State Courts. In terms of actual salaries paid, Texas ranks 7th or 8th.

Mr. Mizell said that because judicial compensation increases have been irregular, compensation does not keep up with inflation. He referred to graphs in Ms. Garcia's presentation that show a recurring theme and indicated that it would be beneficial to have smaller, incremental increases that are predictable over time. Such increases, he added, would go a long way to solving the problem.

Ms. Garcia gave a PowerPoint presentation from the Fact Gathering Committee. Ms. Garcia said that the data was taken from the National Center for State Courts (NCSC), the Report on Judicial Salaries and Turnover from the Office of Court Administration (OCA), 2007 information from the Texas State Bar, and other demographic and salary information collected OCA.

Highlights from the presentation included:

- Overall, Texas judges are very experienced.
 - Nearly half of all judges are between the ages of 55 and 64.
 - More than 60 percent of district judges have 25 years or experience as an attorney, and the percentages get higher by court level.
 - More than 40 percent of district judges have at 10 years of experience as a state judge, and the percentages get higher by court level.
 - A higher than normal percentage of district judges have only 1 to 4 years of experience as a district judge. This is primarily a result of partisan sweeps in the 2008 general election.
- Increases in judicial compensation have been inconsistent, infrequent, and require substantial adjustments to keep up with inflation.
 - Current judicial salaries are almost being outpaced by inflation as measured by the Consumer Price Index, and have been outpaced by inflation as measured by the Employment Cost Index. (This analysis also assumes that the compensation level at the starting point in the analysis was an adequate level of compensation at the time, which may or may not have been the case.)
 - If judicial salaries followed the pattern of the small raises received by state employees, judicial salaries would remain behind.

Carl Reynolds asked if the graphs should show a sharp decrease in compensation levels when judges assume the bench. Mr. Reynolds asked Ms. Garcia if OCA would have such figures available. Ms. Garcia said that OCA could survey judges about their compensation levels prior to taking the bench.

Mr. Slack said that compensation levels could also be compared to other state compensation levels, especially the more prosperous states. Mr. Strawn said such a comparison would likely indicate a smoother line from other states. Mr. Reynolds disagreed and used compensation in New York as an example.

Mr. Slack suggested that the committee draw a timeline on when states established a judicial compensation committee to address judicial salaries.

Ms. Garcia returned to the slide presentation to show comparisons to other compensation levels:

- A county court at law judge in El Paso earns more than the Chief Justice of the Supreme Court and the Presiding Judge of the Court of Criminal Appeals.
- A county court at law judge in Hidalgo makes more than a justice on the Supreme Court or judge on the Court of Criminal Appeals.
- County court at law judges in Harris, Travis and Tarrant counties make as much as or more than a chief justice on the intermediate appellate courts.
- Texas currently ranks 4th in the nation for district court and intermediate appellate court salaries and ranks 5th for salaries at the highest appellate courts. These rankings are adjusted by the cost of living factors used by the National Center for State Courts.
- According to the State Bar's 2007 salary survey, attorneys in Texas with 11 to 15 years of experience make a median salary of nearly \$150,000, and those with 16 to 20 years of experience make a median salary of approximately \$180,000.

Mr. Mizell stated that starting associates at his law firm earn \$160,000 a year and indicated that this starting salary is not unusual. He said that a first year associate starts at \$20,000 to \$30,000 more per year than a judge with 20 to 30 years experience. Mr. Mizell said it is difficult to talk potential judges into taking a pay cut.

Ms. Rohm asked about the State of New York issue and the analysis of its possible relationship to Texas judicial compensation. Mr. Reynolds referred to the memo he had produced on the subject, which had been sent to the Commission. He indicated that an excerpt from the New York ruling may be useful in the Commission's final report.

VI. Discussion/Recommendations and Assignments to Finalize Report

Mr. Strawn explained the process for creating the final report: the task force will discuss all input and format their recommendations. Mr. Strawn said that the committee will start from scratch in producing a new format for these recommendations.

Mr. Reynolds said that he had never been compelled by the "Texas should be second" argument. It is most important that the state attract high-level individuals to the bench. Mr. Reynolds said that Texas is not competing with other states so why use this basis of comparison. Mr. Slack responded that the committee is not constrained by this numerical ranking. Ms. Rohm pointed out that other comparative states are insolvent.

Mr. Strawn said that Texas is behind the curve. The state is also facing budget issues and difficult economic times. He said that the Commission should not read into those circumstances. The mission of the Commission is to analyze the data at hand and present recommendation from those data. Mr. Strawn indicated that the Commission serves as a resource to legislators and needs a legislative strategy that involves key people in the Senate and House.

Mr. Slack asked about the previous compensation recommendation. Mr. Reynolds and Ms. Garcia broke down these numbers, as provided in the presentation and report.

Ms. Rohm asked if annual cost of living increases will be included in the Commission's recommendation. Mr. Mizell that there was some wording included on this matter in the previous report but that "it didn't go far."

Mr. Strawn invited public comment, particularly in regard to the formatting of the new report and strategies.

Judge Woodward stated that the rate of inflation and salary levels represent a wage gap. He said, "This is all money that judges did not get over the course of those years." Judge Woodward said he recognized that the deficit is a real problem but that judges represent a fundamental part of the government. He added that the Texas Department of Public Safety and the Texas Department of Transportation will have more money this year and further lags in judicial compensation is not fair.

Mr. Slack asked how the Commission should go forward with the upcoming session. He added that the Commission previously interacted in an informal manner with legislators. He suggested that the Commission invite legislators, the Governor's office, representatives from state finance, and the judiciary to a meeting to discuss judicial compensation before the final report is complete. He suggested a robust dialog about the compensation linkage issue.

A motion to create a subcommittee to connect with the legislators was moved by Mr. Slack and seconded by Mr. Hernandez. Mr. Slack, Mr. Mizell, Mr. Harwell and Mr. Strawn will work together to plan the meeting with the legislators.

Mr. Slack said that Commission members are free to advocate for the report. Ms. Rohm asked if there was a record of the last vote on judicial compensation to understand how legislators voted. Several Commission members spoke up, saying that the previous recommendations were not voted on but only reached the conversation level.

Mr. Strawn repeated that a legislative strategy should be determined and asked for an agreement to be reached on a date of completion for the report. The Commission members decided that the target date for completion would be October 8, 2010.

Mr. Mizell said that the previous committee drafted the report, reconvened for a meeting and took comments, voted to accept the final draft, and released the report by November of that year.

Ms. Rohm asked if the committee members could find someone to carry the bill. Mr. Slack said that this issue and others would be discussed at the next meeting.

Mr. Strawn summarized the salient points going forward into the next meeting: The target date to finalize the report is October 8, 2010; the Commission will consist of two subcommittees in preparation of the final report; and a teleconference will be arranged in the interim.

Mr. Hernandez asked, in reference to Ms. Rohm's question about carrying the bill, if a senator could be asked about this issue on an informal basis. Mr. Strawn replied that yes, a senator could be approached in such a manner.

VII. Adjournment

The meeting was adjourned at 11:00 a.m.

Appendix B:
**Memo on the Constitutionality of the Linkage Between Judicial
Compensation and Legislative Retirement**

To: Angela Garcia, for the Judicial Compensation Commission
From: Carl Reynolds
Date: April 16, 2010
Re: Does the linkage between judicial compensation and legislative retirement violate the separation of powers doctrine under the Texas Constitution?

Brief Answer

It could under the current caselaw, and depending upon the extent to which the statutory linkage *in fact* creates an undo relationship in the minds of legislators, between judicial compensation and their own retirement benefits. Recent litigation in New York provides a somewhat different factual example, in which the high court found a separation of powers violation through the *de facto*, rather than statutory, linkage of judicial compensation to legislative compensation and other unrelated policy issues.

Background

Judicial salaries in Texas are determined by the legislature and set out by statute as part of the legislature's power to "provide" for judicial compensation under Article V, Section 1-a of the Texas Constitution. Since 1975, the Texas Legislature has provided for its own retirement, along with other elected officials of the retirement membership, by linking legislative retirement benefits to the salary provided to a district judge.¹⁶ The provision dates from a House floor amendment to legislation affecting the Employees Retirement System; the amendment was offered by Rep. Vale and, according to an eyewitness, the effort was to provide some way for legislative compensation to increase, in the aftermath of a defeated constitutional amendment to raise legislative salaries outright.¹⁷ Consequently, every time the legislature provides an increase in judicial compensation for district judges, it also increases the value of legislative retirement packages for its own members. Judicial compensation was most recently adjusted by the 79th legislature in a 2005 amendment to the Texas Government Code.¹⁸ Some state judges are concerned that the "artificial connection" of legislative retirement to judicial compensation has resulted in a "negative political connotation" that has operated to deter any improvement in judicial compensation by state legislators.¹⁹ The concern seems to be that members of the legislature are and should be reluctant to embrace timely pay increases for judges because such a vote will be identified as self-serving on the part of the legislator.

Recently, the New York Court of Appeals, their court of last resort, issued an opinion that triggered this memorandum.²⁰ The court described the sequence of political wrangling

¹⁶Codified as Tex. Govt. Code § 814.103 in 1981.

¹⁷ Interview with former Rep. Lynn Nabers. The bill was S.B. 90, 64th Legislature.

¹⁸ Tex. Govt. Code § 659.012.

¹⁹ Letter from Len Wade, retired District Court Judge to Angela Garcia, Judicial Information Manager, Office of Court Administration, (Apr. 12, 2010) (on file with the Office of Court Administration).

²⁰ *Matter of Maron v Silver*, 2010 NY Slip Op 1528, 18 (N.Y. Feb. 23, 2010).

between the three branches in the famously dysfunctional state government of New York, starting in 2006, about judicial compensation, legislative compensation, and campaign and ethics reform. Ultimately, as the opinion reads, the stalemate over judicial compensation could be attributed twice to failure to also provide for legislative compensation. The opinion is self-serving in its description of the workload of the courts, and places inexplicable weight on the fact that judicial compensation, legislative compensation, and gubernatorial compensation are separately provided for in their constitution. However, there is a persuasive thread running through the decision, which deserves excerption:

Because the Separation of Powers doctrine is aimed at preventing one branch of government from dominating or interfering with the functioning of another co-equal branch, we conclude that the independence of the judiciary is improperly jeopardized by the current judicial pay crisis and this constitutes a violation of the Separation of Powers Doctrine. . . .

[W]hether the Judiciary is entitled to a compensation increase must be based upon an objective assessment of the Judiciary's needs if it is to retain its functional and structural independence. Simply put, by failing to consider judicial compensation increases on the merits, and instead holding it hostage to other legislative objectives, the Legislature "[w]eaken[s the Judiciary] . . . by making it unduly dependent" on the Legislature (Burby, 155 NY at 282).

Separate budgets, separate articles in the Constitution, and separate provisions concerning compensation are all testament to the fact that each branch is independent of the other. This, of course, does not mean that the branches operate without concern for the other. Both the Legislature and the Governor rely on the good faith of the other and of the Judiciary for the good of the State. As members of the two "political" branches, the Governor and Legislature understandably have the power to bargain with each other over all sorts of matters including their own compensation. Judges and justices, on the other hand, are not afforded that opportunity. They have no seat at the bargaining table and, in fact, are precluded from participating in politics. The judicial branch therefore depends on the good faith of the other two branches to provide sufficient funding to fulfill its constitutional responsibilities. Given its unique place in the constitutional scheme, it is imperative that the legitimate needs of the judicial branch receive the appropriate respect and attention. This cannot occur if the Judiciary is used as a pawn or bargaining chip in order to achieve ends that are entirely unrelated to the judicial mission. . . .

The State defendants assert that it is within their legislative rights to consider judicial compensation not on the merits but relative to unrelated policy initiatives. But they overlook the fact that they are treating judicial compensation -- which falls within the scope of their constitutional duties -- as if it were merely another government program appropriation as opposed to compensation for members of a co-equal branch.

We do not attribute the State defendants' failure to increase judicial compensation to any nefarious purpose. Indeed, it is not necessary to consider, or find, the existence of any improper motive. All parties agree that a salary increase is justified and, yet, those who have the constitutional duty to act have done nothing to further that objective due to disputes unrelated to the merits of any proposed increase. This inaction not only impairs the structural independence of the Judiciary, but also deleteriously affects the public at large, which is entitled to a well-qualified, functioning Judiciary (see *O'Donoghue v United States*, 289 US 516, 533 [1933] [prohibition against diminution is to attract competent people to the bench, promote independence of the Judiciary, and for the public interest]).

It must be remembered that the Separation of Powers Doctrine "is a structural safeguard rather than a remedy to be applied only when specific harm, or risk of specific harm, can be identified. In its major features . . . it is a prophylactic device, establishing high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of interbranch conflict" (*Plaut v Spendthrift Farm, Inc.*, 514 US 211, 239 [1995] [emphasis in original]).

The Argument for a Violation

The Texas Constitution commands that Texas Government powers be divided into three separate departments – the executive, the legislative, and the judicial.²¹ The constitution further provides that “no person, or collection of persons, being one of these departments, shall exercise any power properly attached to either of the others.”²² The type of separation of powers requirement provided for explicitly within the Texas Constitution as noted above is frequently referred to as the separation-of-powers doctrine.²³ The separation-of-powers doctrine “prohibits one branch of government from exercising a power inherently belonging to another branch.”²⁴

Although the “decisions of other states construing their constitutions” are only persuasive authority,²⁵ and though no constitutional challenge has ever been raised regarding the legislative retirement provision, the separation of powers doctrine requires that consideration be given to possible threats to judicial independence.²⁶

While the Texas Constitution does not directly relate judicial compensation to the independence and effectiveness of the judiciary, the Supreme Court of Texas has held that the

²¹ Tex. Const. art. II, § 1.

²² *Id.*

²³ George D. Braden et al., *THE CONSTITUTION OF THE STATE OF TEXAS: An Annotated and Comparative Analysis* 89-91 (1977).

²⁴ *General Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 600 (Tex. 2001) citing *State Bd. of Ins. v. Betts*, 158 Tex. 83, 308 S.W.2d 846, 851-52 (Tex. 1958).

²⁵ *Brown v. Meyer*, 787 S.W.2d 42, 45 (Tex. 1990).

²⁶ *Plaut v. Spendthrift Farm*, 514 U.S. 211, 239 (1995).

two are directly related. In *Mays v. Fifth Court of Appeals*, the court stated that “[n]o legislative authority, state or local, can so tighten the purse strings of the judiciary's budget that it fails to provide the funds reasonably necessary for the court's efficient and effective operation.”²⁷ The court went on to assert that adherence “to any contrary view would effectively concede to the legislature the power to render inoperative the judicial branch of government.”²⁸

In *Mays*, the court found that a district judge not only had the statutory authority to increase the pay of court reporters, but that he also had constitutional authority to increase salaries in order to ensure the effective and efficient functioning of the court.²⁹ Presumably, the court could use the same reasoning to find that the linkage of legislative retirement to judicial compensation violates the separation of powers requirement of the Texas Constitution.

The Argument Against a Violation

The New York Court of Appeals concluded that the legislature’s action in considering its *own compensation* along with the judiciary “blurred the line between the compensation of the two branches, thereby threatening the structural independence of the judiciary.”³⁰ The Texas Constitution charges the legislative department with the duty to provide compensation for members of the state judiciary.³¹ Currently, judicial salaries are provided through Section 659.012 of the Texas Government Code. Legislative retirement benefits, which are linked to judicial salaries, are provided through Section 814.103 of the Texas Government Code. Following the rationale of the New York court, the retirement provision would only be inappropriately linked if the retirement benefits are considered compensation.

But the Texas Supreme Court has held that these retirement benefits are highly “contingent” and unlikely to vest, and it has refused to define the benefits as “compensation.”³² Furthermore, the statute providing retirement benefits to members of the Texas Legislature also provides the same retirement benefits to other elected officials as well, including the elected members of the executive department, and “district attorneys to the extent that they receive salaries from the state general revenue fund.”³³ Thus the linkage argument espoused by the New York court is not as strong in the Texas context because there is no actual linkage between a legislator’s compensation and that of a judge.

In addition, the Texas Legislature has installed safeguards to insure that the issue of judicial compensation is regularly considered by a dedicated commission, to whom this memorandum is addressed. In 2007 the 80th Texas Legislature created the Judicial Compensation Commission to “recommend the proper salaries to be paid by the state for all

²⁷ *Mays v. Fifth Court of Appeals*, 755 S.W.2d 78, 80 (Tex. 1988) (Spears, J., concurring).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Tex. Const. art. V, § 1-a.

³² *Brown*, 787 S.W.2d at 45.

³³ See Tex. Govt. Code § 812.002.

justices and judges of the supreme court, the court of criminal appeals, the courts of appeals, and the district courts."³⁴ The Commission is also required to take into consideration several factors, "most importantly, the level of overall compensation adequate to attract the most highly qualified individuals in the state, from a diversity of life and professional experiences, to serve in the judiciary without unreasonable economic hardship and with judicial independence unaffected by financial concerns."³⁵ Prior to each legislative session, the Commission submits its report for the legislature to consider.³⁶

Texas is not the only state with some linkage between judicial and other officeholder compensation. Indiana enacted such a law in 2007,³⁷ and Oklahoma is currently considering a bill to end the current linkage between judicial compensation and that of other officeholders.³⁸

Conclusion

The linkage between judicial compensation and legislative retirement could be determined to violate the separation of powers doctrine, following the logic of the New York Court of Appeals in *Matter of Maron v. Silver* and the Texas precedent of *Mays*. The legislature has not enacted any increases in judicial compensation in the last two sessions and budgetary concerns make such action unlikely in 2011. Continued inaction in the face of recommendations from the Commission could set the stage.

Finally, I remind you that the Commission has addressed this issue tentatively in its 2008 report, p. 5:³⁹

Linkage to other retirement benefits: Increases in the salaries of district judges result, by statute, in increases in pension benefits for other state officials and employees. The reasons why a judge's salary should or should not be increased, however, are different from the reasons why benefits of other public officials or employees should or should not be increased. This is evident in the fact that the Commission, in making its recommendation about judicial pay, is asked to consider factors that are specific to judges. When a recommendation to increase judicial pay, however, leads to a significantly larger fiscal note than that required to increase judicial pay alone, the inevitable budget pressures make it, realistically, more difficult to achieve increase in judicial pay. Likewise, the linkage between an increase in a judge's pay and an increase in a legislator's pension benefits can lead to perceptions of a conflict of interest. The Commission comments on this issue because of its potential impact on judicial pay, but recognizes that this issue is part of a much broader debate that is outside of the ambit of the Commission's charge.

³⁴ Tex. Govt. Code § 35.102.

³⁵ Tex. Govt. Code § 35.102.

³⁶ *Id.*

³⁷ [Burns Ind. Code Ann. § 2-3-1-1](#).

³⁸ [2009 Bill Text OK S.B. 711](#).

³⁹ Available at <http://www.courts.state.tx.us/oca/jcc/pdf/LegReport-120108.pdf>.

Appendix C:
Written Testimony Submitted to the Commission

VINCENT LOPEZ
SERAFINO JENEVEIN

Thanksgiving Tower
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April 14, 2010

Judicial Compensation Commission
Attn: Angela Garcia
Office of Court Administration
P.O. Box 12066
Austin, Texas 78711-2066

Re: Texas Judicial Compensation Commission

Dear Ms. Garcia:

Please let this letter serve as my testimony for consideration by the Commission at its meeting on April 15, 2010.

I had the privilege and honor of serving as a County Court At Law Judge as well as a District Court Judge from 1996 to 2003. I voluntarily chose to step down in 2003, less than a year after I had won unopposed re-election. There are a few factors that contributed to my decision, but I can say with complete certainty that the salary paid to the state Judiciary was the dominant factor in my decision. If the salary received by the Texas District Court Judges had been more in line with the responsibilities of the position, I would have served out the remainder of my term and might still be on the bench to this day.

During my time on the bench, my wife and I became aware that Judges in Texas were making less than first year lawyers at law firms. At that time, we were willing to make the financial sacrifice. However, once our oldest son was born, we quickly realized that our personal sacrifice was going to have a long term impact on our ability to raise and educate our children as well. This was unacceptable to both of us, and together we arrived at the extremely difficult decision to voluntarily give up something that we had worked so hard to achieve and maintain.

Naturally every person's situation will be a little different, but to give the Commission quantifiable information to work with: in the seven years since I left the Judiciary, I have annually earned between two and five times as much as I earned as a State District Judge. I am personally aware of other former Judges who have similar stories.

I urge the Commission to do what it can to help our Legislature appreciate the very real impact that inadequate compensation has on our great State's ability to attract and retain the bright people it needs as Judges. I join the others who have suggested that the Legislature disconnect judicial salaries from Legislative retirement benefits, thus allowing for the salary decisions to be based strictly on merit and free of any artificial and unnecessary political considerations.

Thank you for your consideration of my comments.

Respectfully,

A handwritten signature in black ink, appearing to read 'C. Lopez', with a horizontal line underneath.

Carlos G. Lopez

TADC

THE TEXAS ASSOCIATION OF DEFENSE COUNSEL, INC

An Association of Personal Injury Defense, Civil Trial & Commercial Litigation Attorneys—Est. 1960



Written Testimony on behalf of the Texas Association of Defense Counsel Submitted for consideration to the Judicial Compensation Commission

April 15, 2010

Chairman Strawn, & members of the Judicial Compensation Commission, the Texas Association of Defense Counsel (TADC) is pleased to present the attached written testimony to the Commission. Further attached is a resolution passed by the TADC Board of Directors in 2005 urging adequate judicial compensation in Texas. This resolution was unanimously re-affirmed by the 2010 TADC Board of Directors.

We appreciate the opportunity to provide testimony on the very important issue of adequate judicial compensation. If we can be of any assistance or provide further information, please contact us.

Respectfully submitted,

Greg W. Curry, President

Attachment(s)

President
Greg W. Curry, Dallas
President-Elect
Keith B. O'Connell, San Antonio
Executive Vice President
Thomas E. Ganucheau, Houston
Secretary/Treasurer
V. Elizabeth Ledbetter, Austin
Assistant Secretary/Treasurer
Dan K. Worthington, McAllen
Administrative Vice Presidents
Programs
K.B. Battaglini, Houston
Chantel Crews, El Paso
Legislative
Mike Hendryx, Houston
Michele Y. Smith, Beaumont
Publications
Joel J. Steed, Rockwall
Lynette K. Fons, Houston
Membership & Administration
Jackie Robinson, Dallas
Pamela Madere, Austin
Vice Presidents
Don W. Kent, Tyler
Patricia O. Alvarez, Laredo
Troy Glander, San Antonio
Milton C. Colia, El Paso
Bradley K. Douglas, Austin
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Douglas R. McSwane, Jr., Tyler
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Leonard Grossman, Lubbock
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Gerard T. Fazio, Dallas
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Carl Green, El Paso
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District 9
Robert Booth, Galveston
District 10
Robert Sonnier, Austin
District 11
Neal Pirkle, Waco
District 12
George C. Haratsis, Fort Worth
District 13
Gregory P. Blaies, Fort Worth
District 14
Rebecca Kieschnick, Corpus Christi
District 15
Joseph A. Rodriguez, Brownsville
District 16
Pat Long Weaver, Midland
District 17
Gayla Corley, San Antonio
District 18
Jane L. Haas, Houston
District 19
Kenneth Tekell, Jr., Houston
District 20
Jim Ebanks, Houston
Directors at Large
Gwen Frost, Houston
Kurt Kuhn, Austin
Tim Griesenbeck, Jr., San Antonio
Doug Rees, Dallas
Mark Walker, El Paso
Kenneth C. Riney, Dallas
Barry D. Peterson, Amarillo
James K. Spivey, San Antonio
Lee Ann Reno, Amarillo
Scott P. Stolley, Dallas
Nancy N. Morrison, Waco
Immediate Past President
Tom Henson, Tyler
DRI State Representative
James R. Old, Jr., Beaumont
Young Lawyer Committee Chair
Gregory Binns, Dallas
TADC Executive Director
Bobby L. Walden, Austin

Texas Association of Defense Counsel
Written Testimony
Judicial Compensation Commission – April 15, 2010

The Texas Association of Defense Counsel (TADC) is a professional organization comprised of approximately 2000 members, all of whom are civil trial lawyers engaged primarily in the representation of clients other than personal injury plaintiffs.

The TADC has historically, and continues to be, in great support of fair and adequate compensation for members of the Judiciary. As early as 1965, the TADC Board of Directors voted in support of such measures before the Texas Legislature. In 2005, the TADC took the lead in a coalition of groups to help successfully pass the first judicial pay increase for Texas judges in over 10 years.

It is the position of the TADC that a statute or rule requiring a measured, periodic review of judicial compensation in Texas be enacted and that the ties between judicial compensation and legislative retirement be severed.

The enactment of a statute or rule to provide for periodic review of judicial compensation would create a consistency that does not currently exist. A review process would help to ensure that compensation for Texas judges remains current and competitive with other states as well as the private sector. Periodic review would also help tremendously from a state budgetary standpoint by identifying in a timely fashion, the need for increased compensation. There would be much less impact on the state's budget as any increases that were deemed necessary would be much smaller in percentage if done as needed as opposed to attempting to "catch up" compensation after a long period with no adjustment.

The link between legislative retirement and judicial salaries has long been an impediment in the efforts to secure adequate and timely increases in judicial compensation. In order for any attempt at raising judicial salaries to receive a fair hearing based on its own merit, this link must be removed. The public and press take a very dim view of the legislature voting themselves increases in either salary or benefits. The issue of judicial compensation should be debated and weighed on its own, free of any other issue or encumbrance.

It is imperative that compensation for the judiciary be set at a sufficient level in order to attract qualified candidates to the bench and retain experienced sitting judges. The Texas Judiciary is an independent and co-equal branch of state government and should be respected for that position.

The TADC stands ready to assist the Judicial Compensation Commission and the Texas Legislature on any issue that promotes and provides for adequate and fair compensation for the Texas Judiciary.



RESOLUTION OF THE TEXAS ASSOCIATION OF DEFENSE COUNSEL (TADC)
IN SUPPORT OF ADEQUATE FUNDING OF TEXAS JUDICIAL COMPENSATION

WHEREAS, the Texas Association of Defense Counsel is an association of personal injury defense; civil trial; and commercial litigation attorneys having been established in 1960;

WHEREAS, membership in the Texas Association of Defense Counsel is open to attorneys in private practice who devote a substantial amount of their professional time to the handling of litigated civil cases and whose representation in such cases is primarily other than plaintiff's personal injury cases;

WHEREAS, the Texas Association of Defense Counsel (TADC) on behalf of its more than 2,000 members, wishes to express our concerns regarding adequate appropriations for the Texas Judiciary;

WHEREAS, one of the stated purposes of the Texas Association of Defense Counsel is to promote improvements in the administration of justice;

WHEREAS, it is vital to maintain the Judicial Branch as a strong, independent and co-equal branch of state government;

WHEREAS, Texas judicial pay significantly lags behind the rest of the country for comparable state courts;

WHEREAS, to maintain the high quality of our judicial system, it is vital that compensation for the judiciary be set sufficiently high to retain experienced judges and to attract qualified candidates;

WHEREAS, the lack of a comprehensive judicial compensation system and adequate increases in compensation has resulted in a loss of members of the judiciary;

THEREFORE, be it resolved, that the Texas Association of Defense Counsel, strongly urge the Texas Legislature, to implement a comprehensive judicial compensation system and increase current compensation levels for all state judges.

RESOLUTION ADOPTED BY THE UNANIMOUS VOTE OF THE TEXAS ASSOCIATION OF DEFENSE COUNSEL BOARD OF DIRECTORS on the 21st day of FEBRUARY, 2005.

David E. Chamberlain, President

Greg W. Curry, Secretary Treasurer

2-21-05

DATE

Administrative Office of the District Courts
Harris County, Texas

Judge Mike Anderson
Administrative Judge, Criminal Division

1201 Franklin, 7th Floor
Houston, Texas 77002-2022
713-755-6575

June 7, 2010

RECEIVED
JUN 14 2010

OFFICE OF
COURT ADMINISTRATION

Judicial Compensation Commission
Office of Court Administration
P.O. Box 12066
Austin, Texas 78711-2066

Dear Commission Members,

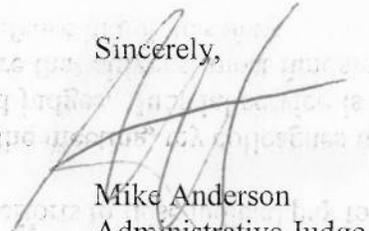
Thank you for your attention and interest regarding judicial compensation issues. I was in attendance at the April 15, 2010, meeting at which the Commission heard from current and former members of the state's judiciary regarding the effect judicial pay has in their career decisions. Although I did not offer any comments at the meeting, I am writing to let the Commission know that the Harris County criminal district judges share many of the speakers' views and support the Commission's efforts to raise judicial pay to a competitive level.

Like many of the speakers at the meeting, my colleagues in Harris County are concerned about attracting and keeping qualified judges. Judicial service is among the most vital areas of public service. Criminal judges ensure that citizens' most fundamental rights are protected, and they are entrusted as the last line of defense in public safety.

The 22 Harris County felony judges serve the third largest county in the country. As of today there are 14,291 cases pending in the Harris County felony courts. Because of the extraordinary caseloads and demands of serving such a populated county, the criminal district judges here also support the continuance of the county supplemental pay for district judges. In addition, the county supplement provides medical insurance and retirement incentives for the vast majority of the judiciary.

Thank you again for your efforts to secure competitive salaries for judges throughout the state. If I can be of any further assistance in the preparation of the Commission's legislative report and recommendations on judicial compensation issues, please let me know.

Sincerely,



Mike Anderson
Administrative Judge
Criminal Division



HARVEY G. BROWN, JR.
brown@wrightbrownclose.com

Former Judge
152nd Judicial District 1995-2002
Board Certified
Personal Injury Law
Texas Board of Legal Specialization

May 25, 2010

RECEIVED
MAY 27 2010

OFFICE OF
COURT ADMINISTRATION

Angela Garcia
Judicial Compensation Commission
Office of Court Administration
P.O. Box 12066
Austin, Texas 78711-2066

Dear Mrs. Garcia:

I served as the judge the 152nd District Court in Harris County, Texas between 1995 and 2002. I loved serving on the bench and intended to remain a judge until I had served 20 years, but felt compelled to voluntarily retire in 2002, which was my eldest son's senior year of high school.

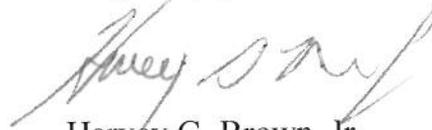
At that time I was earning a state salary of \$101,700 and was very concerned about meeting the cost for the college education of my three children. If I had not been concerned about my financial ability to put my children through college without college loans or forcing them to pay for a large portion of their education, I would have remained on the bench. As part of my joining a private firm, I received a signing bonus that was sufficient to pay for the first year of my son's tuition and room and board and received a substantial pay raise.

It is important to keep qualified judges on the bench, and regular periodic raises are an important part of maintaining qualified judges. I was pleased when judges were granted a substantial raise in 2006, but that was over six years after the previous raise. If I had known such a raise would have been later forthcoming and believed that pay raises could be removed from the political process, I would have remained on the bench. One interesting alternate to address judicial compensation—and one that directly impacts one of the main reasons judges leave the bench—would be for the state to pay for an amount equal to four years for the average tuition charged by the state's leading public universities for each judge's child.

Angela Garcia
May 25, 2010
Page 2

Thank you for your consideration of my experience.

Very truly yours,



Harvey G. Brown, Jr.

HGB/jrh



RECEIVED
APR 12 2010
OFFICE OF
COURT ADMINISTRATION

ROBIN SAGE
Judge 307th Family District Court
101 East Methvin, Suite 463
Longview, Texas 75601
(903) 237-2534

April 6, 2010

Judicial Compensation Commission
Attn: Angela Garcia
Office of Court Administration
P.O. Box 12066
Austin, Texas 78711-2066

Dear Commission:

Thank you for the opportunity to address you regarding judicial compensation issues.

I have served on the 307th Family Court Bench for 19+ years. I will retire at the conclusion of this term at age 51. There are two issues I would like to address:

1. Sabbaticals for Judges

Having served for many years on the family court bench, I have experienced first hand and have observed in many colleagues the problem of burn out and fatigue on the bench. There are studies documenting the vicarious trauma judges experience hearing these difficult cases day in and day out.

The political pressures judges experience often make them feel that they can't take extended vacations. In my experience, few judges actually take the four weeks to which we are entitled.

I know this suggestion is unorthodox, but I would like to suggest that judges, especially those in family and other specialty courts should have a sabbatical every ten or twelve years. Just a couple of months would renew and invigorate judges for better health and renewed perspective. Senior or former judges could step in and handle the load for a limited time.

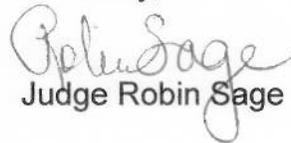
I believe that if I had had such an opportunity, I would have taken a rest and then continued for many years on the bench.

2. In the discussions locally about who would run for my open seat, there were several good attorneys who told me that they simply could not afford to serve on the bench and educate their children, save for retirement, and care for aging parents. In the past, I found it very disheartening to learn that first year associates at large firms were starting out making more than judges.

I believe it is important that we have the best and brightest legal minds for our Court system to command the respect of the public and survive long term. To get those bright and dedicated individuals, compensation must be equivalent to what good lawyers make.

Thank you for your consideration of these matters. I know that funds are not infinite and you work within constraints of handling taxpayer funds, but I urge you to consider both these issues.

Sincerely,


Judge Robin Sage

Judicial Compensation Commission
Attn: Angela Garcia
Office of Court Administration
P.O. Box 12066
Austin, Texas 78711-2066



STEVE SMITH

DISTRICT JUDGE
361ST JUDICIAL DISTRICT

Brazos County Courthouse
300 E. 26th St., Suite 305
Bryan, Texas 77803

July 14, 2010

(979) 361-4380
FAX: (979) 361-4385
E-Mail: ssmith@co.brazos.tx.us

Judicial Compensation Commission
Office of Court Administration
205 W. 14th Street, Suite 600
Austin, TX 78701

Dear Commission:

I was asked by Amanda Stites to provide you the substance of my oral testimony given to the Commission in its meeting on April 15th. Due to an error in my office, I am not sure you received the letter that was to be sent after I drafted the written comments back in May. Hopefully this communication will not be too late for your consideration.

One of the fundamental problems with our current judicial pay system is the lack of any predictability of raises. Since there is no mechanism in place for consistent review of appropriate salary levels, judges are forced to "guess" about when they can ever expect a raise, and for what amount it may be. When I tell friends that I have not received ANY form of pay raise since January of 2006, they are taken aback and invariably ask "how can you operate your personal budget that way?" I simply tell them I do the best I can, and that my cost of living rises each year without any way to compensate for it. Prior to the 2006 raise, the last judicial pay raise was in 1999.

Another issue of which the Commission should be aware is that of the work that judges do outside the courtroom and outside of regular business hours. Many people believe that judging is a simple "8 to 5 job." I often spend time "after 5:00" and on weekends doing legal research and other work I simply don't have time to do during the week. While I am not advocating that Texas use such a system, many of my colleagues around the country are provided law clerks or staff attorneys to do work that most Texas judges do themselves. We are also called on in our communities to speak on the role of our branch of government. I won't even go into the 3 a.m. calls for approval of search warrants.

When my children became driving-age, I started teaching a night course at Blinn College to help with the cost of their car insurance. I know of many other judges who supplement their incomes because of the sacrifices that are made to serve in the judiciary. Several years ago I applied for and was a finalist for a U.S. Magistrate Judge position. I

Judicial Compensation Commission

July 14th, 2010

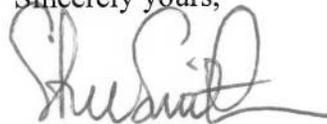
pg. 2

love being a state district judge, but looked at this position because my children were approaching college and the position paid \$21,000 more per year. Fortunately, I was blessed by having both my children be awarded a merit scholarship for college that covered tuition cost at a private university. Many of my colleagues have not had this opportunity and have left the judiciary because of the financial hardship. These are good men and women who were excellent judges.

I realize that there is no easy answer to this issue. In making your recommendations please remember that judges, unlike members of the legislative and executive branches, have a very limited ability to have outside sources of income while they serve. Perhaps there is another way to think of it. How do you get qualified people to sign on for a job where the present judge of this court has received one pay raise in 11½ years of service?

Thank you for providing me the opportunity to share these thoughts with you. Let me know if I can provide any further information that might be of help.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Steve Smith", written in a cursive style.

Steve Smith

SLS/

KELLY HART & HALLMAN LLP

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Houston, Texas 77002

April 12, 2010

Judicial Compensation Commission
Attn: Angela Garcia
Office of Court Administration
P.O. Box 12066
Austin, TX 78711-2066

VIA FAX AND REGULAR MAIL

Re: Texas Judicial Compensation Commission

Dear Ms. Garcia:

I am writing this letter for the Commission's consideration at its meeting on April 15. I would appreciate any assistance you can provide in delivering this letter to the Commission for consideration.

I was privileged to serve as district judge of the 141st District Court in Tarrant County, Texas from December, 2003 until February, 2009. It was a great honor to serve with so many selfless public servants with whom I was privileged to work on a daily basis. However, over time it became apparent that the salary of a district judge was not sufficient to meet the costs associated with sending three children to college. While I would have loved to have the opportunity to continue to serve as a district judge, it was not possible due to financial concerns.

I am very grateful that the Commission is gathering information regarding judicial compensation. However, I hope you will take the next step and advocate for improved judicial compensation. This is a topic which has been discussed among Texas judges for years, and many Texas judges either silently leave the bench or quietly endure financial stresses because of their devotion to public service. Neither is a desired outcome in my opinion.

One particular recommendation is that the legislature disconnect judicial salaries from legislative retirement benefits. This artificial connection imposes an unduly negative political connotation to any improvement of judicial compensation. Legislators should not have to hear complaints about "voting for a raise for themselves" when they vote to improve judicial salaries. I hope the Commission will consider recommending that the legislature put an end to the unfortunate and unnecessary link between judicial compensation and legislative retirement benefits.

I appreciate your assistance and appreciate the Commission's consideration of this issue which affects so many fine judges and their families throughout this great state.

Sincerely,

A handwritten signature in black ink, appearing to read 'Len Wade', with a long horizontal stroke extending to the right.

Len Wade

LW

C: Honorable David Garcia
Via Fax

Qualities of the Judiciary that Affect Judge's Income.

The Judiciary has certain qualities that can affect an individual judge's income. This effect is not always recognized by the public or appreciated by the Legislature.

People want to do business with their leaders; individuals want to buy their car or insurance from their Representative, or retain their Senator to represent them as a lawyer. This is accepted because people naturally want to do business with their leaders and because our leaders are usually the best in their respective businesses. While our Representatives must sacrifice greatly to serve the citizens, they nevertheless may receive some financial benefits. These ordinary business relationships are neither illegal nor unethical, but they are not permitted in the judicial branch of government.

Our Judiciary must be fair and impartial. We expect Judges to make decisions based on law enacted by our representatives. "Judges should follow the law, not make law." Judges are not to allow political influence, personal relationships or personal benefit affect their decisions. These characteristics of the Judiciary are required by our unique American form of government which is based on law, rather than the edicts of a dictator or commands of a military regime.

Because Judges are guardians of the law, it is not enough that judges make decisions for the right reasons. It is also imperative that citizens perceive that Judges make decisions for the right reasons. The public must have confidence in the Judiciary, because if people lose confidence in the Judiciary, they will lose faith in the law, and then lose respect for our form of government.

The requirements to avoid wrongful influences and to maintain public confidence, call for Judges to operate under different ethics than those of the other branches of government. These ethics are in part reflected in the Code of Judicial Conduct. Canon Two of that Code provides that a Judge shall not allow any relationship to influence a judge's conduct or judgment, and the Canon prohibits a Judge from using the prestige of judicial office to benefit self or others. Canon Four requires Judges to restrict their outside activities so as not to interfere with the proper performance of their duties.

These abstract principles have a real impact on a Judge's income. We want judges to have experience and be good lawyers. Therefore most will have solid careers in law with many well-paying clients who the lawyer developed over years of hard work. Many are partners with other lawyers, and the partnership may own the office building where the lawyers are located or perhaps own other business interests, such as a Title Insurance Company. Many lawyers are Board Certified in a particular field of law and most are leaders, involved in their community by serving on charitable boards, often a source of business.

When a lawyer becomes a Judge, the new judge must cease practicing law, so those loyal clients the lawyer developed will redirect their loyalty to another attorney. The new judge must withdraw from law partnerships because continuing to practice would interfere with judge's duties and continuing in partnership with other lawyers would give the perception that the former partners have undue influence on the judge. For the same reasons, the new judge must sell any interest in real estate partnerships with other lawyers, as well as sell the title company or other business interests that would conflict with judicial duties. Because often a Judge does not concentrate 40% of time to a particular area of law, the Judge must relinquish Board Certifications of special competence. And a Judge cannot serve on charitable boards if the time commitment interferes with judicial duties or if the charity regularly comes before the Court.

So, by becoming a judge, a lawyer relinquishes many opportunities for income and investment. But judges accept these restrictions because judges understand how essential their service is to government and the American way of life. The Legislature, in turn, must recognize the important role the Judiciary plays in our unique form of government. The Legislature must recognize its obligation to attract very capable, honest, experienced lawyers to the bench. A fair salary is necessary and when the Legislature deliberates about what is a fair salary, the Legislature should recognize the financial impact judicial service has on an individual.

Ben Woodward, 119th District Court
July 2010