

New Mexico **J**udiciary

Judicial Compensation Commission

2012 Report to the
Legislative Finance Committee
and the
Department of Finance and Administration

October 1, 2012

Cover: A few of New Mexico's older county courthouses.

Top, left to right:

One of the WPA projects of the 30s, the Art Deco-style Roosevelt County Courthouse in Portales was built in 1939 with the designs of William M. Bickel.

The Luna County Courthouse in Deming was built in 1910 and was designed by W. E. Corwin. Deming's annual duck race takes place across the street in the city park.

Built in 1909, the Union County Courthouse in Clayton is New Mexico's oldest county courthouse in continuous use. It was designed by the architectural firm of D. P. Kaufman & Son.

Middle, left to right:

The Grant County Courthouse in Silver City was erected in 1930 with the designs of architect George Williamson.

The Chaves County Beaux-Arts-style courthouse in Roswell was completed in 1912, the year New Mexico became a state. It is just down the street from the International UFO Museum and the green dome is visible throughout the city.

The Mission-style Eddy County courthouse in Carlsbad was erected in 1891 and its appearance was altered to its current style in 1939. It has one of New Mexico's best town squares.

Bottom, left to right:

The Hidalgo County Courthouse in Lordsburg was built in 1926-1927 with Classical Revival elements. The firm of Thorman and Frazer designed it.

The Guadalupe County Courthouse in Santa Rosa was built in 1909 with Romanesque Revival elements. In 1946 an addition was added to the building's left.

The 1917 Rio Arriba County Courthouse in Tierra Amarilla hosted a shoot-out in the 1970s that resulted over a land rights quarrel.



October 1, 2012

Senator John Arthur Smith
Chair, Legislative Finance Committee
Representative Luciano "Lucky" Varela
Vice-Chair, Legislative Finance Committee
325 Don Gaspar, Suite 101
Santa Fe, NM 87501

HAND DELIVERED

Secretary Tom Clifford
Department of Finance and Administration
Office of the Secretary
407 Galisteo Street, Room 180
Santa Fe, NM 87501

HAND DELIVERED

RE: Judicial Compensation Commission Report and Recommendations

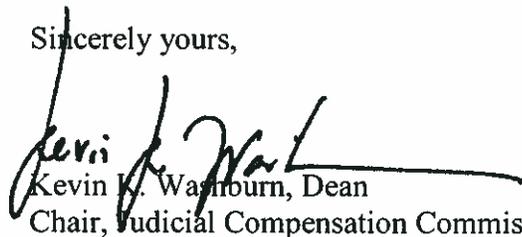
Dear Chairman Smith, Vice-Chairman Varela, and Secretary Clifford:

I am pleased to present you the report and recommendations of the Judicial Compensation Commission for FY2014. Based on our evaluation, we urge that you be guided by the policy contained in the report to provide a market competitive compensation package for our judges. We also urge you to shore up the judicial retirement program by establishing a permanent increase in the judges' and state's contributions to these programs.

An electronic version of the report may be found on the New Mexico Judiciary's website at <http://www.nmcourts.gov/courtadministration.html>.

Please do not hesitate to contact me if you should require further information. I can be reached at (505) 277-4700 or washburn@law.unm.edu.

Sincerely yours,


Kevin W. Washburn, Dean
Chair, Judicial Compensation Commission

xc: Members of the Legislative Finance Committee

Introduction

In 2004, the Legislature enacted Senate Bill 263 creating the Judicial Compensation Commission, an independent six-member Commission charged with recommending to the Legislative Finance Committee and the Department of Finance and Administration a compensation and benefits plan for New Mexico judges.

The Commission is comprised of:

Kevin Washburn, Dean of the University of New Mexico School of Law, statutorily designated as the chair of the Commission;

Carlo Lucero, Owner and President, Sparkle Maintenance, Inc., appointed by the Governor of New Mexico;

Debra Seligman, appointed by the President Pro Tempore of the New Mexico Senate;

Juanita Sena-Shannon, appointed by the Speaker of the New Mexico House of Representatives;

Hans Voss, President of the New Mexico State Bar

William F. Fulginiti, Executive Director of the New Mexico Municipal League, appointed by the Chief Justice of the New Mexico Supreme Court.

Since its inception, the Commission has repeatedly found that judicial salaries in New Mexico are among the very lowest in the region, and rank 46th in the nation. To continue to attract high quality judges to the bench in New Mexico and to encourage them to remain on the bench, these disparities must be addressed. The Commission has consistently recommended that judicial salaries in New Mexico be increased so that New Mexico judges earn salary and benefits commensurate with their peers in the region.

The New Mexico Judicial Compensation Commission must “report to the legislative finance committee and the department of finance and administration its findings and recommendations on salaries for judges and justices” annually on or before December 1. NMSA 1978 § 34-1-10(G). Judicial compensation in New Mexico is set through a statutory formula based on the salary the Legislature sets for the Justices of the Supreme Court. NMSA 1978 § 34-1-9

By statute, the Chief Justice salary is set \$2000 higher than the salary of a Justice. Each judge of the Court of Appeals earns a salary equal to 95% of the salary of a Supreme Court Justice. Each of the Judges of the District Courts statewide earns a salary equal to 95% of the salary of a Judge of the Court of Appeals. Each Metropolitan Court Judge earns a salary equal to 95% of the salary of a judge of the District Court. A Magistrate salary is 75% of the salary of Metropolitan Court Judge. Salaries for Chief Judges are set according to the same general formula, but are based on the Chief Justice’s salary.

Judicial salaries are not adjusted for location. A judge of the same rank earns the same amount in any community in the state, regardless of size, docket or cost of living. Judicial salaries likewise are not adjusted for seniority. A judge who has served for 20 years in a particular rank is paid the same salary as a judge who has served for only one year.

On Thursday, June 28, 2012, the Commission met to execute its statutory responsibility, all members being present. After careful consideration, the members of the Commission unanimously adopted the recommendations set forth in this report. The Commission has adopted a modest approach that will, over the long term, gradually reduce pay disparities for New Mexico judges.

Update on 2012 Legislative Session

In its fourth annual report in September 2011, the Judicial Compensation Commission made the following recommendations on judicial compensation for FY11:

The Commission recommended implementation of a five-year plan for increasing the salary of New Mexico judges in modest incremental steps for fiscal years FY11, FY12, FY13, FY14 and FY15. The Commission proposed increases as follows: 2% salary increase in the first year, 3% in the second year, 4% in the third year, 5% in the fourth year, and 6% in the fifth year. Although the current Legislature cannot commit a future Legislature to future salary increases, the Commission urged the Legislature to agree in principle to this long-term approach that, over time, will help achieve the important goal of fair salaries for our judges.

Had the Legislature taken this first step in executing this plan by approving a 2% increase in January 2012, to be effective July 1, 2013, this would have amounted to an increase of just \$2,474.00 for a Supreme Court Justice and a total recurring cost of just \$488,292.00. A Supreme Court Justice's salary would have eventually reached \$144,758 and lower court judges would also have seen gradual increases, resulting in salaries that are more fair.

The PERA of New Mexico published an Experience Study of both the MRA and the JRA for the periods July 1, 2002 through June 30, 2007. In both studies, the actuaries recommend that reliance on docket fees as a source of funding for these retirement funds be eliminated. This is consistent with similar recommendations made in the past twenty years to eliminate docket fees as a source of pension funding. Docket fees account for close to half the revenue to these retirement funds. If employee and employer contributions are increased along with the salary recommended by the Commission, experience with the increased contributions to these accounts should demonstrate an improving funding status for both retirement funds. When such data is available, reliance on docket and court fees as a source of funding for the retirement accounts should be reduced until it can be eliminated.

The Commission recommended that, if its salary recommendation was adopted, the judges' contributions to JRA and MRA increase 1/2% and the State's contribution to JRA and MRA increase 1% each year for fiscal years FY11, FY12, FY13, FY14 and FY15.

During the 2012 legislation session, Representative Mimi Stewart introduced HB 72, proposing to switch \$3 million in general fund for docket fees in JRA and MRA. This bill was endorsed by the Retirement Systems Solvency Task Force and PERA, which has been advised by its actuaries for more than 20 years to do this. The legislation passed both houses unanimously but was vetoed by the Governor. The Commission recommends that this legislation be again introduced during the 2013 Legislative session.

FY 2014 Salary Recommendation

SALARY

In 2012, the Judicial Compensation Commission reviewed judge salary data for the nine-state region being used by the HAY Group to compare New Mexico state employee salaries for the Executive Branch. The Commission determined not to use this group as the comparison market upon which to base its more modest judicial salary recommendations for FY 2014. Instead, the Commission recommends a salary target that would at least bring New Mexico judges to a comparable salary with a comparable state. The Commission selected Oklahoma as that state. Oklahoma is geographically contiguous to New Mexico, has a population of 3.7 million compared to 2.1 million in New Mexico, and has a similar urban/rural composition to New Mexico. The cost of living in New Mexico is higher than that of Oklahoma, giving Oklahoma judicial salaries more buying power than those in New Mexico. As of January 1, 2012, the statewide cost of living in New Mexico was 99.33% of the national average, while the cost of living index for Oklahoma was 90.42%.¹

Despite these economic and statistical similarities, the Commission notes that New Mexico's judicial salaries fall below those of Oklahoma. As the chart below shows, New Mexico Supreme Court salaries are 10.14% lower than in Oklahoma, with similar disparities in the appellate and trial courts. If Supreme Court salaries were raised by \$13,694 annually to equal salaries in Oklahoma, New Mexico salaries would only be tied for 35th in the national ranking of judicial salaries. For additional comparison, the judicial salaries of the states reported by the Census Bureau to have the lowest median household income are provided. Mississippi has the lowest income (\$39,078), Alabama the sixth lowest (\$42,245), and New Mexico ranks 10th lowest (\$44,732). The Commission concluded that this very modest goal is one New Mexico can and should achieve in the next two years, by adding one-half of the difference, or \$6,452 to the Justice salary, with similar increases at the reduced statutory rates that apply to other judges. If this first-year target is achieved in 2013, the Commission will make a similar recommendation for 2014.

STATE	HIGHEST COURT		INTERMEDIATE APPELLATE COURT		GENERAL JURISDICTION TRIAL COURT			Cola-Adjusted Salary	Cola-Adjusted Rank
	Salary	Rank	Salary	Rank	Salary	Rank	Cost-of-Living		
New Mexico	\$123,691	46	\$117,506	38*	\$111,631	48	99.30	\$112,383	42
Oklahoma	\$137,655	35	\$130,410	33	\$124,373	39	90.42	\$137,550	19
Mississippi	\$112,530	51	\$105,050	39	\$104,170	51	92.63	\$112,457	41
Arkansas	\$145,204	30	\$140,732	20	\$136,257	23	90.15	\$151,141	8
Tennessee	\$167,976	11	\$162,396	9	\$156,792	10	90.43	\$173,391	2
Montana	\$113,964	50			\$106,870	50	100.10	\$106,759	46
South Carolina	\$131,171	37	\$133,741	29	\$130,312	29	97.76	\$133,294	23
Alabama	\$180,005	9	\$178,878	5	\$134,943	25	93.05	\$145,015	13

*There are only 39 jurisdictions with an Intermediate Appellate Court, making the New Mexico salaries the second lowest.

¹Cost of living data calculated by the Council for Community and Economic Research from 400 national reporting jurisdictions for the four most recent fiscal quarter] The US Census reports that, using the three-year average of median household income for the period 2009 to 2011, among all states the New Mexico rank was 42 (\$44,732) and the Oklahoma rank was 35 (\$47,008).

Accordingly, the Commission's recommendation is: increase Justice salary on July 1, 2013, by \$6,452, to \$130,143. The cost to the general fund would be as follows:

Recommendation: Move Supreme Court Justice Salary to \$130,143							
	No.	Current Rate	New Rate	Diff	Benefits	Total	Percent Increase
Chief Justice	1	\$ 125,691	\$ 132,143	\$ 6,452	\$ -	\$ 6,452	5.1%
Justice	4	\$ 123,691	\$ 130,143	\$ 6,452	\$ -	\$ 25,808	5.2%
Chief Judge COA	1	\$ 119,406	\$ 125,536	\$ 6,129	\$ -	\$ 6,129	5.1%
COA Judge	9	\$ 117,506	\$ 123,636	\$ 6,129	\$ -	\$ 55,165	5.2%
Chief District Judge	13	\$ 113,436	\$ 119,259	\$ 5,823	\$ -	\$ 75,698	5.1%
District Judge	75	\$ 111,631	\$ 117,454	\$ 5,823	\$ -	\$ 436,720	5.2%
Chief Metro Judge	1	\$ 107,764	\$ 113,296	\$ 5,532	\$ -	\$ 5,532	5.1%
Metro Judge	18	\$ 106,050	\$ 111,581	\$ 5,532	\$ -	\$ 99,572	5.2%
Presiding Magistrate	3	\$ 80,823	\$ 84,972	\$ 4,149	\$ -	\$ 12,447	5.1%
Magistrate Judge	63	\$ 79,537	\$ 83,686	\$ 4,149	\$ -	\$ 261,377	5.2%
Hear Off/ Spec Comm	11.5	\$ 89,305	\$ 93,963	\$ 4,658	\$ -	\$ 53,571	5.2%
Totals	199.5					\$ 1,038,470	
Employer Benefits Calculations							
	JRA	MRA	HO/SC				
RHCA	2.00%	2.00%	2.00%				
FICA	7.65%	7.65%	7.65%				
PERA	12.00%	11.00%	16.59%				
Total	21.65%	20.65%	26.24%				

RETENTION TIERS

In addition to the salary increases, the Commission recognized the need to create a retention incentive within the salary structure for judges. In the private sector and most other parts of the public sector, experience is rewarded with higher pay. The Commission believes that experienced judges are more valuable than rookie judges and should be encouraged to remain on the bench rather than pursuing higher salaries in the private sector. This will also reduce the costs associated with judicial turnover. Judicial Nominating Commission experience over the past several years reveals a trend of applications skewed toward very junior and very senior applicants, with a gap of applicants in mid-career. Applicants in mid-career would be expected to blend the experience of more senior applicants with the expectation of longer service from less experienced candidates.

While a mix of judges benefits the Judiciary and the public as a whole, the present salary structure is reported by candidates and non-candidates as a disincentive to those in mid-career who would bring significant practical experience as well as a likelihood of longer service on the bench. This proposal is intended to attract and keep those who can be expected to serve on the bench long enough to develop experience on the bench with long-term commitment to judicial service.

The Commission proposes that tenure on the bench will entitle judges to an additional increase in pay. The proposal is to use seven years as the benchmark with a 5% increase at 7-year intervals. Judges with

7 years or less on the bench as of July 1, 2013, would receive only the statutory pay. Those with 7 - 14 years would receive a 5% increase on the statutory salary, those with 14 - 21 years would receive a 10% increase, and those with over 21 years would receive a 15% increase. The 5% increase is the same for all judges in a category. It is not compounding. Thus, as shown in the chart below, each district judge with 7 - 14 years of service on the bench receives 5% more than the statutory salary of \$111,632, or an additional \$5,582, increasing the salary for them to \$117,214.

The total recurring cost of this proposal is \$733,178.

The annual cost will go down as senior judges retire and up as judges achieve tenure that crosses the 7-year benchmarks. It is a reasonable approximation of the annual cost in FY 2014 and for several years thereafter. The current average tenure of judges on the bench is less than 10 years.

The chart shows the current tenure of judges and the cost of the 5% retention proposal based on the existing statutory salary. In a few cases, a judge has been counted in the "less than 7 years" category due to known retirements of more senior judges that will occur before July 1, 2013, as well as current existing vacancies awaiting appointment of new judges.

Court Type	CURRENT TENURE OF JUDGES				COST OF 5% PROPOSAL				
	Judges 0-7 Years	Judges 7-14 Years	Judges 14-21 Years	Judges 21+ Years	Current Salary	Judges 7-14 Years	Judges 14-21 Years	Judges 21+ Years	TOTALS
Supreme Court	2	1	1	1	\$ 123,691 \$ 6,185	\$ 6,185	\$ 12,369	\$ 18,554	\$ 37,107
Court of Appeals	2	4	3	1	\$ 117,506 \$ 5,875	\$ 23,501	\$ 35,252	\$ 17,626	\$ 76,379
District Court	44	31	12	3	\$ 111,631 \$ 5,582	\$ 173,028	\$ 133,957	\$ 50,234	\$ 357,219
Metro Court	7	9	3	0	\$ 106,050 \$ 5,303	\$ 47,723	\$ 31,815	\$ -	\$ 79,538
Magistrate Court	38	12	14	2	\$ 79,537 \$ 3,977	\$ 47,722	\$ 111,352	\$ 23,861	\$ 182,935
Total 190 Judges	93	57	33	7				TOTAL	\$ 733,178

2014 HAY State Salary and Benefits Comparison

In addition to salary, the Commission examined retirement benefits, including employer and employee contributions, in the HAY comparison states. The chart on the next page shows that New Mexico judges pay a higher percentage of salary in contributions to judicial retirement than every state except Wyoming. By contrast, the State of New Mexico makes contributions to judicial retirement at the lowest rate of any of the states (note that Oklahoma is required by statute to increase the employer contribution from 10% to 22% by 2019). In addition, New Mexico's maximum benefit of 75% of salary at retirement exceeds only Kansas, where the maximum is 70%.

Four states provide a maximum retirement benefit of 100% of salary and another state provides a maximum benefit of 90% of salary. By any measure, not only is the compensation for New Mexico judges significantly lower than the comparison mountain states, the retirement benefits are at best in the lower range of average while the percentage of salary contributed by the judges is very high and the amount contributed by the State is very low. Given concerns that exist regarding the level and adequacy of judicial retirement funding, it is clear that judges are already carrying a much higher burden to fund their retirement than is found in other states.

The Commission recommends that State contributions increase to meet the State's funding obligations and to replace docket fees, in addition to replacing docket fees with general funds tied to a salary percentage.

2013 HAY State Salary and Benefits Comparison

Justice Salary as of 1/1/2011	State	Normal Retirement	Contribution Pct.		Benefits
			Employee	Employer	
\$150,000	TEXAS	- Age 65 with 10 years if currently holding a judicial office - Age 65 with 12 years whether or not currently holding a judicial office - Any age with 20 years whether or not currently holding a judicial office - Served at least 12 years on appellate court and sum of age and service equals or exceeds 70	6.00%	16.83%	- 60% of final avg. monthly salary if retire when eligible - Max of 90% (2.3% for every year beyond 20 years of service credit)
\$143,350	UTAH	- Age 70 with 6 years of service - Age 62 with 10 years of service - Age 55 with 20 years of service with full actuarial reduction - Any age with 25 years of service	0% *	17.09%	- 5.00% of final avg. monthly salary for every year of service up to 10 years - plus 2.25% of final avg. month salary for every year of service between 10 and 20 years - plus 1.00% of final avg. monthly salary for every year of service over 20 years - Max of 100%
\$155,000	ARIZONA	- Age 65 with 5 or more years of service - Age 62 with 10 or more years of service - Any age with 20 or more years of service	7.00%	*	- 4.00% of final avg. monthly salary for every year of service credit not to exceed 80% * Employer contribution percentage is based on the actuarial valuation to meet both normal cost and any unfunded accrued liability
\$170,000	NEVADA	- Age 65 with 5 or more years of service - Age 60 with 10 or more years of service - Any age with 30 or more years of service	0%	25.60%	- 3.4091% of avg. of the highest 36 months of salary for every year of service credit not to exceed 75%
\$135,905	KANSAS	- Age 65 with 1 or more years of service - Age 62 with 10 or more years of service - Any age when age and years of service equal 85	6.00%	26.38%	- 3.5% of final avg. salary of the 3 highest of last 10 years of service not to exceed 70% - SC Justices must retire at age 70, all other judges must retire at age 75
\$137,655	OKLAHOMA	- Age 65 with 8 or more years of service - Age 60 with 10 or more years of service - Any age when age and at least 8 years of service equal 80	8.00%	10.00% *	- 4.00% of avg. of the highest 36 months of salary for every year of service credit not to exceed 100% *- Employer contributions will increase 1.5% annually up to 22.00% for fiscal year ending June 30, 2019
\$139,660	COLORADO	- Age 65 with 5 or more years of service - Age 60 with 20 or more years of service - Age 50 with 30 or more years of service	8.00%	17.36%	- 2.50% of the highest annual salary for every year of service credit not to exceed 100%
\$126,500	WYOMING	- Age 70 with continuous years of service - Age 65 with 4 or more years of service - Age 60 with 20 or more years of service	9.22%	14.50%	- 4.00% of final avg. of the highest 36 months salary for every year of service up to 5 years - plus 3.00% of final avg. of the highest 36 months salary for every year of service between 6 and 15 years - plus 2.00% of final avg. of the highest 36 months salary for every year of service between 16 and 20 years - plus 1.00% of final avg. of the highest 36 months salary for every year of service of 21 years or more - Max of 100%
\$123,691	NEW MEXICO	<i>Member prior to July 1, 2005</i> - Age 64 with 5 or more years of service - Age 60 with 15 or more years of service	9.00%	10.50%	- 75% of last full year of salary (X) .05 (X) Number of years of service, not exceeding 15, + 5years - Max of 75%
		<i>Member after July 1, 2005</i> - Age 64 with 5 or more years of service - Age 55 with 20 or more years of service	9.00%	10.50%	- Salary received during the last full year (X) 3.75 (X) Number of years of service - Max of 75%

Judicial Retirement Account

Beginning July 1, 2011, HB 628 implemented a retirement contribution rate swap which in effect increased employee contribution rates by 1.75% and decreased employer contribution rates by 1.75% as a measure to balance the state's FY 2012 recurring budget. This contribution rate swap was in addition to the 1.5% rate swap implemented beginning July 1, 2009. However, language in HB 628 has provisions for these contribution rate swaps to be removed in steps by June 30, 2013 if state revenues and cash reserves reach a certain level.

Judges currently contribute to the Judicial Retirement Account (JRA) at a rate of 9.0%, with a contribution from the State of New Mexico at 10.5%.

Magistrates contribute to the Magistrate Retirement Account (MRA) at a rate of 9.0%, with a contribution from the State of New Mexico of 9.5%.

Normal Retirement Eligibility Requirements for JRA and MRA

JRA age and service credit eligibility requirements for an individual who initially became a member **prior to July 1, 2005**:

- Age 60 or older with 15 or more years of service credit; [3.75% per year + 5 years x final salary; maximum = 75% at 15 years]; or
- Age 64 or older with 5 or more years of service credit.

JRA age and service credit eligibility requirements for an individual who initially became a member **on or after July 1, 2005**:

- Age 55 or older with 16 or more years of service credit [3.75% per year = 75% at 20 years]; or
- Age 64 or older with 5 or more years of service credit.

JRA was funded at 59.99% based on the June 30, 2010 Valuation (down from 60.54% at June 30, 2009).

MRA age and service credit eligibility requirements:

- Any age and 24 or more years of service credit [3.5% per year + 5 years with maximum 75% at 24 years]; or
- Age 60 or older with 15 or more years of service credit; or
- Age 64 or older with 5 or more years of service credit.

New Mexico Judicial Compensation Commission
UNM School of Law Dean, Chair
1117 Stanford NE
Albuquerque, NM 87131
505-277-4700