

**State of New Mexico**

**Judicial Compensation Commission**

**2015 Report**

To the Legislative Finance Committee and  
Department of Finance and Administration

## Introduction

In 2005, 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:

**Dean Alfred Mathewson**, Dean of the University of New Mexico School of Law, statutorily designated as Chair of the Commission<sup>1</sup>;

**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;

**Roxanna M. Knight**, appointed by the Speaker of the New Mexico House of Representatives;

**Erika E. Anderson**, President of the New Mexico State Board of Bar Commissioners

**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 found that judicial salaries in New Mexico are among the very lowest in the nation. The comparisons suffer further when the cost of living is considered because judges with comparable salaries are in states with a lower cost of living. To attract high quality judges to the bench in New Mexico and to encourage them to remain on the bench, the Commission has consistently asked that these disparities be addressed.

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<sup>1</sup>Until July 1, 2015, UNM Law School Dean David Herring served as Chair.

## Statutory Requirement

The New Mexico Judicial Compensation Commission (JCC) 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. 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. The Chief Justice salary is set \$2,000 higher than the salary of a Justice. Each judge of the Court of Appeals is paid a salary equal to 95% of the salary of a Supreme Court Justice. Each District Court judge is paid 95% of the salary of a Judge of the Court of Appeals. Each Metropolitan Court judge is paid 95% of the salary of a judge of the District court. Each Magistrate is paid 75% of the salary of a Metropolitan Court judge. Salaries for Chief Judges are set according to the same formula 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, cost of living, or judicial experience.

On Wednesday, May 27, 2015, the Commission met to execute its statutory responsibility. All members were present except Ms. Seligman and Ms. Anderson. After careful consideration, the members of the Commission unanimously adopted the salary recommendations and the recommendation to submit to the 2016 Legislature a proposed constitutional amendment with respect to judicial pay.

A draft constitutional amendment in the language provided in the draft JCC report was presented to the Budget Committee and Chief Judges Council, which endorsed it to the Supreme Court. However, the Supreme Court decided not to adopt the proposed constitutional amendment in the 2016 session because the Judiciary is supporting a constitutional amendment on pretrial detention (Article II, Section 13) and the Court felt that was enough of a challenge in a short session.

The Court did adopt the remaining recommendations of the Commission and a request for a 5% increase in judicial pay for judges is in the base budget request of all courts. In addition, the Court adopted a policy of endorsing whatever the Commission recommends regarding salary in any given year and will seriously consider a constitutional amendment if it is again recommended in the future.

## Update on 2015 Legislative Session

In its 2014 report, the Judicial Compensation Commission made the following recommendations on judicial compensation for the 2015 legislative session:

- Increase Justice pay to \$137,655, an increase of 5%. This would approximate the salary of a Justice in Oklahoma, a western state with a large metropolitan area (Oklahoma City), significant Native American populations and reservations, and large tracts of rural land. New Mexico has Albuquerque, many pueblos and reservations, and large tracts of rural area. The cost-of-living in Oklahoma is 5% lower than in New Mexico<sup>2</sup>.
- The Commission recognizes that additional legislation to address other aspects of judicial retirement is neither likely nor advisable so soon after the very significant 2014 legislation. Going forward, the Commission recommends that the Legislature continue to consider meeting the state's funding obligations without reliance on docket fees, and in the future consider whether improved retirement benefits may help attract a broader diversity of judicial candidates.

### Judicial Compensation

During the 2015 legislative session, judicial pay did not increase for FY2016.

### Judicial Retirement

During the 2015 legislative session, judicial retirement did not change. The significant legislative changes made in the 2014 session had no direct effect for the fiscal year reporting period ending June 30, 2014, but the legislation alone improved the funded status of the Judicial Retirement Fund by +7.4% to 64.2% and the Magistrate Retirement Fund improved by +8.3% to 64.5%. It is expected that annual reports for the fiscal year ending June 30, 2015, which will be published in the Fall of 2015, will show further improvement in the funded status of judicial retirement funds as a result of the 2014 legislation. Judicial retirement funding continues to rely in part on fees.

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<sup>2</sup>Council for Community and Economic Research (C2ER) comparative cost-of-living table for 2015 shows the value of \$100 in Oklahoma is \$111.23, or 90% of the national cost-of-living, while in New Mexico it is \$105.26, or 95% of the national average. Data at <http://taxfoundation.org/blog/real-value-100-each-state-0> accessed August 13 2015.

## 2015 Salary Recommendation

The Commission reiterates the recommendation made last year. The salary of a Supreme Court Justice should be increased 5% to \$137,655.

- As of January 1, 2015, this salary for New Mexico Supreme Court Justices (\$131,174) ranks 48 of 51 among all the states and the District of Columbia.
- The recommended increase to \$137,655 would raise that ranking to 41 out of 50 if the salaries of all other states remain unchanged.
- The salary for New Mexico Court of Appeals judges ranks last at 40 out of 40 and would improve to 34 out of 40 with the recommended 5% increase if salaries in all other states do not increase.
- District judges in New Mexico rank 50 out of 51 and would increase to 43 out of 51 with the recommended 5% increase if salaries in other states remain unchanged.<sup>3</sup>

If increased 5% to \$137,655 the salary of a New Mexico Supreme court Justice would approximate that of a Justice in Oklahoma. Oklahoma is a western state with a large metropolitan area (Oklahoma City), significant Native American populations and reservations, and large tracts of rural land. New Mexico has Albuquerque, many pueblos and reservations, and large tracts of rural area. Although the cost-of-living in New Mexico is 5% higher than in Oklahoma, judges are paid about 5% more in Oklahoma.<sup>4</sup> New Mexico is at the bottom of every comparison of judicial salaries. Even when adjusting for the cost-of-living, New Mexico trial judges rank 46 out of 51 (Oklahoma trial judges rank 27 out of 51 adjusted for cost-of-living).<sup>5</sup>

The Commission recognizes that judicial appointments reveal a recognizable trend toward younger attorneys with backgrounds in criminal justice as government employees and a lack of candidates with experience of more than 15 years and in private practice in civil and business cases. The salaries are having an impact on the diversity of candidates who seek judicial office. As retirements remove long-serving judges with experience outside the criminal law area, improved salaries should help address the need to attract a more diverse mix of experience among attorneys seeking to be judges. In the 2016 legislative session, the Commission recommends a step toward improved compensation through a 5% increase as shown on the next page.

<sup>3</sup>NCSC Annual Survey of Judicial Salaries, January 1, 2015, at <http://www.ncsc.org/~media/Microsites/Files/Judicial%20Salaries/January%201%202015%20Judicial%20Salary%20Survey.ashx>.

<sup>4</sup>Data from the Council for Community and Economic Research (C2ER) at <http://taxfoundation.org/blog/real-value-100-each-state-0>.

<sup>5</sup>NCSC Annual Survey of Judicial Salaries, January 1, 2015, footnote 3 *supra*.

## 2015 Salary Recommendation, continued

	FY 2016 Salary	FY 17 5% Increase	Cost of Increase <sup>6</sup>
Justice	\$131,174	\$137,733	\$ 32,795
Court of Appeals	\$124,616	\$130,847	\$ 62,310
District Court	\$118,384	\$124,303	\$550,467
Metropolitan Court	\$112,466	\$118,089	\$106,837
Magistrate Court	\$ 84,349	\$ 88,566	\$282,539
Total Cost of 5% Increase = \$1,070,458			

With the 5% increase for FY 2017, New Mexico will continue to rank toward the bottom in judicial salaries at all levels. In addition, Judicial compensation in New Mexico continues to lag behind the pay of employees in state and local government, but the Judiciary also decides the most critical legal issues facing the people of New Mexico. Many state and local employees are paid more than a Justice of the Supreme Court. Administrators in the other branches of government and in counties and cities in New Mexico receive higher compensation than a Justice of the Supreme Court.

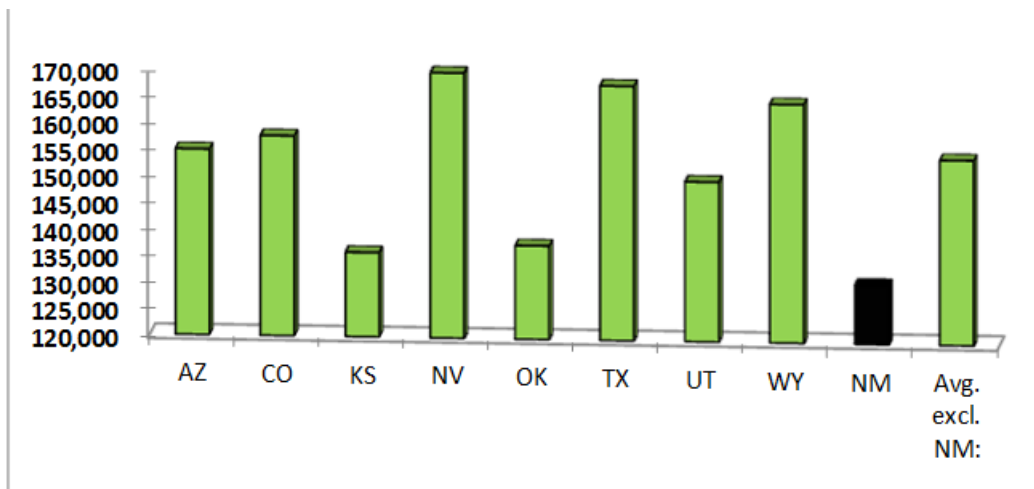
For example, the Bernalillo County Attorney in Albuquerque is paid \$15,000 per year more than the Chief Justice of the New Mexico Supreme Court, while the NMSU General Counsel is paid more than \$50,000 above the salary of the Chief Justice. Even the Assistant City Manager in Las Cruces is better compensated than the Chief Justice and the comparisons worsen for appellate and trial judges.

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<sup>6</sup>Cost includes all judges as follows: 5 Supreme Court, 10 Court of Appeals, 94 district court, 19 metropolitan court, and 67 magistrate court as well as hearing officers and commissioners whose salaries are tied to judicial pay. Cost of increase includes the small additional compensation paid to the Chief Justice, Chief Judges of each court, and Presiding Judges in a few large magistrate courts.

## National Salary Comparison

- New Mexico Supreme Court Justice salary ranks 48 out of 51.
- New Mexico Intermediate Appellate Court (Court of Appeals) Judge salary ranks 40 out of 40 (not all states have an Intermediate Appellate Court).
- New Mexico general-jurisdiction district trial court judge salary ranks 50 out of 51, just \$785 higher than in Montana.
- The mean national salary of a Supreme Court Justice is \$163,150 and the median is \$162,200; the New Mexico salary has been \$131,174 since July 1, 2014. New Mexico Justice pay is 19% below the national average.<sup>7</sup>



**Supreme Court Justice Salaries as of July 1, 2015 in Western Comparison States**

AZ	\$155,000
CO	\$157,710
KS	\$135,905
NV	\$170,000
OK	\$137,655
TX	\$168,000
UT	\$150,150
WY	\$165,000
NM	\$131,174

Average excluding NM: \$154,928

<sup>7</sup>NCSC Annual Survey of Judicial Salaries, January 1, 2015, footnote 3 *supra*.

## State and Local Salary Comparison<sup>8</sup>

The pay of a New Mexico Supreme Court Justice, the highest ranking position in the Judicial Branch, elected by a statewide electorate, also suffers by comparison with state and local employees as well as university employees.

***July 1, 2015 salaries for New Mexico judges and justices:***

New Mexico Supreme Court Chief Justice	\$133,174
New Mexico Supreme Court Justice	\$131,174

***Salaries for select state and local government and university employees that exceed Justice pay (\$131,174):***

President, New Mexico State University	\$385,000
President, University of New Mexico	\$362,136
University Counsel, University of New Mexico	\$246,000
Dean, UNM School of Law	\$197,000
Bernalillo County Manager	\$214,060
Los Alamos County Administrator	\$176,459
Santa Fe County Manager	\$172,712
Executive Director, PERA	\$163,030
ERB Executive Director	\$156,751
County of Los Alamos, Deputy Administrator/CFO	\$153,756
City of Rio Rancho, City Manager	\$153,005
Bernalillo County Attorney	\$150,000
Los Alamos County Attorney	\$144,269
City of Santa Fe, City Manager	\$140,005
Governor's Chief of Staff	\$136,350
City of Albuquerque, City Attorney	\$135,242

***Salaries of select state and local government employees that exceed pay (\$118,384) for district court trial judges:***

Legislative Council Service, Executive Director	\$130,037
Executive Director, NM Spaceport Authority	\$126,250
Secretary, NM Tourism Department	\$126,250
LESC, Executive Director	\$124,836

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<sup>8</sup>Data is from salaries reported on the New Mexico Sunshine Portal, the UNM and NMSU Sunshine Portals, various sites published by state and local governments, and as reported by New Mexico Watchdog.org.



## 2015 Draft Constitutional Amendment

### Judicial Pay Constitutional Amendment

The Committee considered the challenges that frustrate enactment of adequate judicial pay. The current statute makes the Commission's recommendations advisory only. This requires either a stand-alone bill for judicial pay or that the Supreme Court prioritize the Commission's recommendations over other needs of the courts in the budgets the Court approves for submission in September each year. Experience has demonstrated that both approaches are unlikely to result in consistent enactment of the Commission's recommendations.

The Commission recommends the Legislature approve by joint resolution a constitutional amendment to be presented to voters on the November 2016 ballot. The amendment would make the salary recommendations of the Judicial Compensation Commission effective unless rejected or modified by the Legislature, by amending NM Constitution, Article VI, Section 11:

The justices of the supreme court shall each receive such salary as may hereafter be fixed by law. **Salaries for justices and judges shall be established by law. There shall be a judicial compensation commission composed of such members as shall be provided by law. On or before December 1 each year the judicial compensation commission shall report to the legislative finance committee and the department of finance and administration its findings and recommendations on salaries for judges and justices. The recommendations shall take effect and have the force of law as of July 1 following submission, unless the legislature shall by joint resolution reject or amend the recommendations during the next regular legislative session following submission of the commission's recommendations. Sufficient appropriations shall be provided for the salaries of all justices, judges and state judicial officers.**

The existing Judicial Compensation Commission statute (section 34-1-10) requires salary recommendations but gives them no effect. Elsewhere in the NM Constitution, the "legislature shall provide by law" for compensation of district court judges, Article VI, Section 17, and magistrates shall be paid "as may be provided by law, Article VI, Section 26. The amendment would:

- Make the recommendations of the independent judicial salary commission created by the Legislature effective while retaining the Legislature's power to reject or modify its recommendations;
- Reduce judicial lobbying for pay increases in competition with other critical needs of the courts;
- Avoid litigation such as occurred in 2014 over veto or partial veto of appropriations for judicial salaries; and
- Establish the Legislative Branch as the authority for Judicial Branch salaries, minimizing political interests in establishing pay for judges.

Eighteen states have a Judicial Salary Commission that makes advisory recommendations as currently occurs in New Mexico. The states are Arizona, Texas, Oklahoma, Louisiana, Indiana, Montana, Alabama, Georgia, North Carolina, New Jersey, New Mexico, Connecticut, Maine, Oregon, Nevada and Utah.

Six states have a Salary Commission for judicial pay that makes recommendations that take effect unless affirmatively rejected by the legislature. These states are Washington, Delaware, New York, Missouri, Illinois and Maryland. The Washington Constitution, Article XXVIII, Section 1, provides that judicial salaries “shall be fixed” by a commission whose report “shall become law” within 90 days of its filing unless rejected or amended by a referendum of citizens.

The Missouri Constitution in Article VIII, Section 3, paragraph 8 provides that the Salary Commission shall file a schedule of compensation by December 1, which “shall become law unless disapproved by concurrent resolution adopted by a two-thirds majority vote of the general assembly before February 1 of the year following the filing of the schedule.”

## **Judicial Retirement Funding**

As New Mexico’s Judicial Compensation Commission has continued to stress over the years, adequate compensation for state court judges is tied directly to judicial retirement benefits, which have increasingly become a target for budget cuts across the country. The recent economic recession highlights the challenges to maintaining adequate compensation for state court judges.

The failure of judicial salaries in most states to keep pace with inflation has received much attention. Less attention has been given to the gradual erosion of judicial retirement provisions over the last few years and, although state constitutional provisions protect judicial salaries, no such restrictions safeguard judicial retirement benefits. Retirement provisions are of particular importance to judges because judicial careers typically start in early middle-age, a very different scenario from other state employees.

Judicial retirement benefits have increasingly become a target for budget cuts, including in New Mexico, and in some states retirement plans have been changed to 401(k)-style plans. These changes have led to lawsuits in a number of states including Arizona and New Jersey, where the changes were held to be unconstitutional. The constitutionality of reductions to cost-of-living adjustments (COLAs) in the salaries of sitting judges has also been successfully challenged in Illinois.<sup>9</sup>

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<sup>9</sup> National Center for State Courts: Trends in State Courts 2014, Special Focus on Juvenile Justice and Elder Issues, Judicial Retirement and the Recession, p. 67-70

In addition, as the New Mexico Judicial Compensation Commission has discussed for a number of years, beyond arguments about the unconstitutionality of certain changes to judicial retirement plans, there are practical reasons for being concerned with reductions in the value of judicial retirement provisions. Reducing the take-home salaries of judges arguably decreases the attractiveness of a judicial career.

## **2015 Recommendation on Judicial Retirement Funding**

In addition to salary, the Commission examined retirement benefits, including employer and employee contributions, for judges in the eight mountain west states. With changes made in the 2014 legislative session, 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. For example, Oklahoma is required by statute to increase the employer contribution to 22% by 2019.

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 high and the amount contributed by the State is low. It is clear that New Mexico 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. Docket fees can be directed to the general fund to offset part of the State's contribution. However, given the significant changes made by legislation in 2014 and the improving funded ratio of the judicial retirement funds, the Commission makes no recommendation for legislation to reform judicial retirement funding in the 2016 legislative session.

There are reasons for treating judicial retirement provisions as a special cases. Some reasons are practical. Lawyers become judges mid-to-late career, limiting their ability to accrue years of service for contributing to a defined-contribution plan. Likewise, lawyers in private practice often have substantially higher salaries than judges. Generous and predictable judicial retirement benefits serve as an incentive to attract successful lawyers to join the bench, in lieu of competitive salaries.<sup>10</sup>

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<sup>10</sup>National Center for State Courts, Trends in State Courts 2014, footnote 9, *supra*, p. 70

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