



Judicial Compensation Commission

Report to the Texas Legislature

December 1, 2008

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TABLE OF CONTENTS

Executive Summary

Findings and Conclusions	1
Recommendation	3
Recommended Statutory Changes	3
Cost	4
Additional Recommendations	5
Other Issues for Future Study	6

History and Function of the Commission6

Current Structure of Judicial Salaries7

Factors Required to be Considered by the Commission9

Factor 1: Skill and Experience Required of the Particular Judgeship	10
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.....	11
Factor 3: Value of Comparable Services Performed in the Private Sector, Including Private Judging, Arbitration and Mediation	12
Factor 4: Compensation of Attorneys in the Private Sector	13
Factor 5: Cost of Living and Changes in the Cost of Living	14
Factor 6: Compensation from the State Presently Received by Other Public Officials	15
Factor 7: Other Factors Traditionally Considered.....	17
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	19

Conclusion..... 19

Appendices

Appendix A: Minutes of Commission Meetings	21
Appendix B: Salary Rankings of 10 Most Populous States	25
Appendix C: Salary Spread between General Trial Courts and Highest Courts for the Ten Most Populous States.....	27

LIST OF TABLES AND FIGURES

Table 1:	Recommended Judicial Compensation.....	3
Table 2:	Annual Fiscal Impact	4
Table 3:	Current Judicial Compensation	9
Figure 1:	Age of Judges Serving on the Bench as of August 31, 2008	10
Figure 2:	Average Years of Experience of State Judges as of August 31, 2008	11
Figure 3:	Salary Distribution of 175 Respondents to 2005 State Bar Survey with 16-20 Years Experience	13
Figure 4:	Salary Distribution of 153 Respondents to 2005 State Bar Survey with 11-15 Years Experience	14
Figure 5:	District Judges Salaries: Actual vs. Alternatively-Triggered with 1991 as Base	15
Table 4:	State Constitutional, Elected and Other High-Ranking Executive Officeholders	16
Table 5:	Law School Deans	16
Table 6:	Public University Chancellors and Presidents	16
Table 7:	City Attorneys	17

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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 that are listed on page nine 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 2005 study shows, as an example of the earning power of lawyers, that while lawyers with 16 to 20 years of experience earned a median salary of \$201,000, a significant number earned salaries of over \$400,000, and some earned salaries of over a million dollars. Further, a recent survey of lawyers shows that a majority of those responding (58 percent) were considering being or had definite plans to become a judge, but also shows that a majority of those responding viewed the current salary levels of high and intermediate courts to be too low for them to personally consider becoming judges. 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 take into account the eroding force of inflation. From 1998 to 2005, for example, judicial salaries stayed the same, even as inflation went up 20 percent. Just since December 2005, when the last salary adjustment was implemented, inflation has gone up another six 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 each biennium the effect of any 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.

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, the Commission observes that Texas still pays its judges a salary that lags behind some smaller, slower-growing states. To eliminate this lag and take into account the size, growth and stature of Texas, the Commission recommends that Texas adjust salaries of its highest court justices to a level that is second in the nation in comparison to other state judicial salaries, and adjust the salaries of the intermediate appellate and district court judges to keep the salaries of the various courts in Texas in relative balance with each other.

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 2010-2011 biennium:

Table 1: Recommended Judicial Compensation

Judge	State Salary	County Supplements	Total	% Increase Above Current
Supreme Court Chief Justice / Court of Criminal Appeals Presiding Judge	\$168,000	na	\$168,000	10.2%
Supreme Court Justice / Court of Criminal Appeals Judge	\$163,000	na	\$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 for judicial salaries. There will also be an additional fiscal impact of approximately \$2.6 million on the Judicial Retirement System (JRS) Plan I and Plan II.

The table below provides more detailed information regarding potential fiscal impacts related to judicial salaries and budget items that are linked to judicial salaries¹, such as prosecutors' salaries.

Table 2: Annual Fiscal Impact

State Judge Salary Increases	\$4,746,000
<i>Supreme Court / Court of Criminal Appeals</i>	<i>\$244,000</i>
<i>Courts of Appeals</i>	<i>\$910,000</i>
<i>District Courts</i>	<i>\$3,592,000</i>
Retirement	\$2,550,000
<i>JRS 1</i>	<i>\$1,800,000</i>
<i>JRS 2</i>	<i>\$750,000</i>
District Attorneys	\$1,211,200
County Attorney Supplements	\$345,280
Statutory County Court Judge Salary Supplements*	\$1,080,000

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

¹ See Government Code Sections 25.0015, 41.013, 45.175, 45.280, 46.002 and 46.0031

Additional Recommendations

County Salary Supplements: Currently, most intermediate 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 ten 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 percent receive a supplement that is at or close to (within \$2,000) the maximum allowed by law. High court justices receive no such 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 was received to the effect 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 and regular in making salary adjustments. Additional concerns were also voiced about losing county benefits 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 and adjustments to the salaries of judges.

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.

Other Issues for Future Study

The Commission is set up as a permanent Commission and is charged with submitting a report each biennium to the Legislature that reports of judicial pay. 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 in a public way the length of their service.

Supplements for administrative and specialized dockets: The presiding judges of each administrative judicial region and two 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, 2007². 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.

² Acts 2007, 80th Legislature, Regular Session, Ch. 1090, September 1, 2007. Texas Government Code, Chapter 35.

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 on page nine of this report.

The Commission was appointed in mid-2008 and held its first meeting on June 30, 2008 at the Texas Law Center. At this meeting the Commission created the Fact Gathering Committee to gather additional data for the Commission's review and the Public Comment Committee to take public comment from key stakeholders. The Fact Gathering Committee is co-chaired by William B. Strawn and Patrick Mizell and the Public Comment Committee is chaired by Michael Slack.

The Commission held additional meetings on September 8, 2008, October 15, 2008 and _____ to review the information provided by the committees and prepare and review its recommendations and final report. The minutes of the Commission's meetings are attached as Appendix A.

The Data Gathering Committee worked with staff of the Office of Court Administration (OCA) and the State Bar of Texas to develop and conduct a survey of attorneys in Texas. The committee also analyzed the data gathered regarding the factors that must be considered by the Commission. Mr. Strawn presented a summary of the Data Gathering Committee's findings to the Commission at its September 8, 2008 meeting.

The Public Comment Committee took public comment on issues related to judicial compensation at a meeting on August 25, 2008. Representatives from the following organizations were in attendance: Texas State Judiciary, Texas District and County Attorneys Association, Alliance for Judicial Funding, State Bar of Texas, Texans for Lawsuit Reform, Texas Civil Justice League, Texas Association of Business, Tarrant County Court Administrator, Texas Association of Defense Counsel, and Texas Trial Lawyers.

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.

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 \$5,000 less than the combined salary from state and county sources provided for a justice of a court of appeals, currently \$140,000. Of the 445 district court judges in the state, only 10 do not receive a county salary supplement. The majority, 315 judges (71 percent), receive a supplement that is at or close to (within \$2,000) the maximum allowed by law. Additional information about the specific levels of supplementation received by judges throughout Texas is available at <http://www.courts.state.tx.us/oca/judinfo.asp>.

A justice of a court of appeals is entitled to 110 percent of the state salary of a district judge, currently \$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, currently \$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. The justices of ten of the courts of appeals receive the maximum allowed by law.

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. Currently that amount is \$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 supplementation from a county.

Judges who have completed at least 16 years of service also receive longevity pay of \$20 per month for each year of service credited in the retirement system (maximum of \$320 per month, or, stated otherwise, \$3,840 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.

Table 3 summarizes current state judicial salaries and supplements:

Table 3: Current Judicial Compensation

Judge	State Salary [†]	County Supplements ^{††}	Total
Supreme Court Chief Justice / Court of Criminal Appeals Presiding Judge	\$152,500	na	\$152,500
Supreme Court Justice / Court of Criminal Appeals Judge	\$150,000	na	\$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

[†] All state judges are entitled to monthly longevity pay of \$20 for each year of service credited in the retirement system (maximum of \$320 per month) after completing 16 years of service, Tex. Gov't Code Sec. 659.0445. 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). Tex. Gov't Code Secs. 659.012, 31.001 and 32.001.

^{††} Additional compensation provided by counties in judicial and appellate districts for extra judicial service performed by judges and justices. Tex. Gov't Code Secs. 31.001 and 32.001.

IV. Factors Required to be Considered by the Commission

In determining what a “proper” salary would be, the Commission was charged 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.³

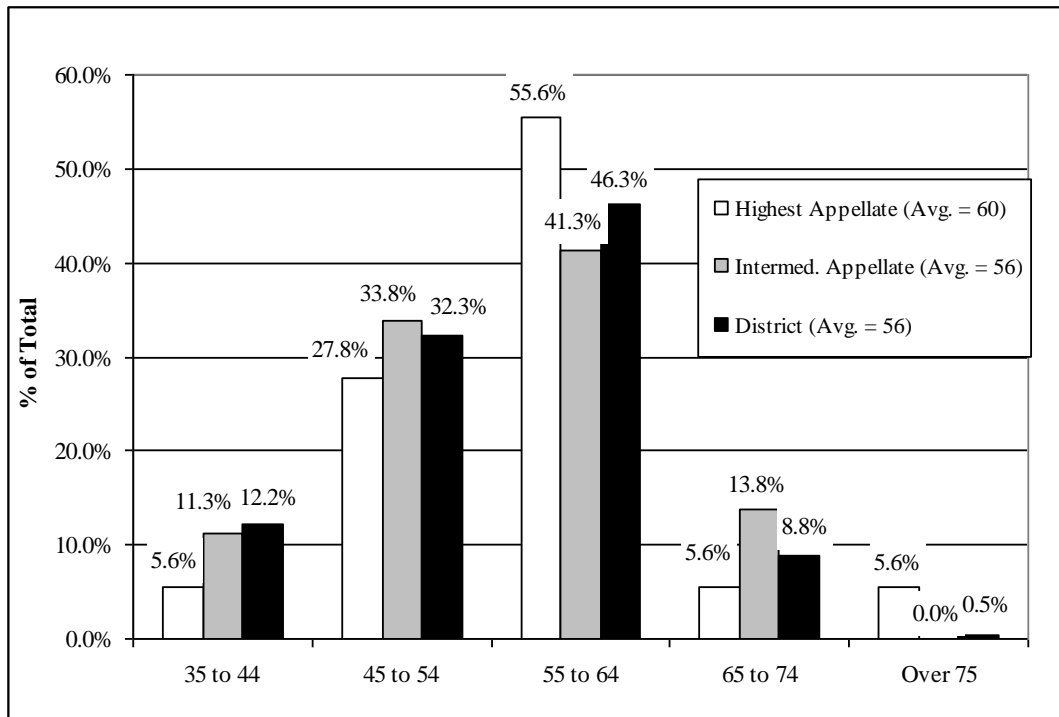
The following is a summary of the Commission’s analysis of the data collected regarding these eight factors.

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 together for at least ten years.

Data collected by the Commission shows that the Texas state judiciary is very experienced. According to demographic statistics maintained by the Office of Court Administration, more than half (302, or 55.8 percent) of the judges serving on the bench as of August 31, 2008 were 55 years of age or older, and the average age at each court level was 56 years or more.

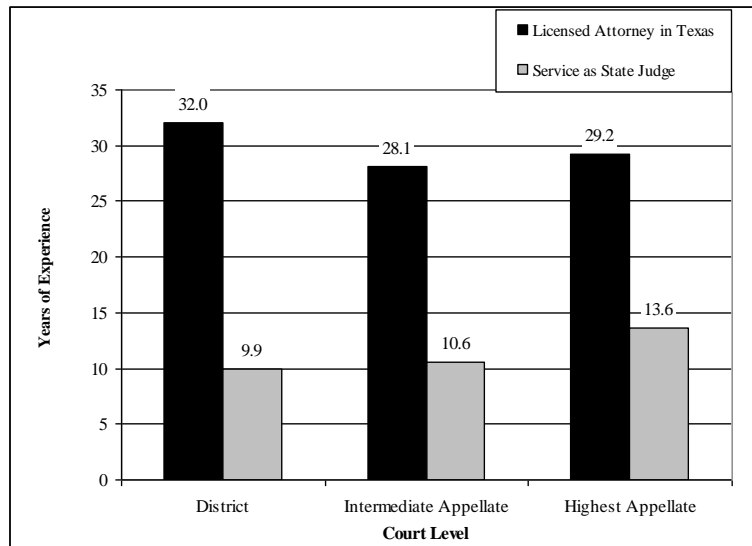
Figure 1: Age of Judges Serving on the Bench as of August 31, 2008



³ Acts 2007, 80th Legislature, Regular Session, Ch. 1090, September 1, 2007. Texas Government Code, Section 35.102(b).

As of August 31, 2008, active district judges have served an average of ten years on the bench and an average of 32 years as attorneys (including the years of judicial service). Justices of the intermediate appellate courts have served an average of 10.6 years on the bench and an average of 28 years as attorneys. Justices and judges of the highest appellate courts have served an average of 13.6 years on the bench and an average of 29 years as attorneys.

Figure 2: Average Years of Experience of State Judges as of August 31, 2008



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, and states are encouraged to update the information on the website of the NCSC in real time.

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). See *NCSC Survey of Judicial Salaries*, Vol. 33, No. 1, pg. 2, January 1, 2008.

Although the Commission looked at data from all 50 states, the Commission focused most closely on the data for the ten most populous states. Texas is the second largest state

in our nation, in both area and population, and is the most rapidly growing state. This size and growth translates into a docket that, both in size and in terms of the complexity and importance of the cases needing adjudication, is at the top of the nation. It was thought by the Commission, therefore, that the best comparators would be those of the other populous states.

Appendix B is a chart that sets out a comparison, on an actual and normalized basis, of salaries of the ten most populous states. On an actual salary basis, a high court justice in Texas is paid less than a judge in California, New York, Florida, Illinois, Michigan, Georgia and Pennsylvania. Even when this salary is normalized, a high court justice in Texas is paid less than a justice in Illinois, Georgia, and Pennsylvania. This is so even though Texas has almost twice the population of Illinois, and is growing at a pace that widens the gap between Texas and *all* other states in the nation every year. Essentially the same situation exists for Texas intermediate appellate courts. For Texas district courts, on an actual salary basis, Texas pays less than four other states, and on a normalized basis, less than one state. If county supplements are not considered, Texas pays its district courts less than six other states on an actual salary basis, and on a normalized basis, less than three states.

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 point in time. Second, no other state ties its judicial salaries to the salaries of a federal judge. Third, federal salaries are not normalized, which means that a federal judge in, say, California gets paid the same amount as a federal judge in, say, Illinois, even though there is over a 40 percent difference in the cost of living of 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 that can be obtained in the private sector through serving as a private judge, arbitrator or mediator. Compensation can range widely and is not provided on an annual salary basis. The Commission did obtain information from a small sample of mediators and arbitrators that indicated that rates currently being charged range from \$75 to \$300 per hour *per party*. The American Arbitration Association (“AAA”), one of the nation’s leading arbitration associations, said that rates, on a daily basis, average \$2000 to \$2500 *per case*.

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 the salary of a district judge every eight weeks, at the highest rates, or, based on the rates cited by AAA, could earn

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’ salary data collected by the State Bar of Texas and reported in its *Private Practitioner 2005 Income Report*. For that report, a written questionnaire was mailed on February 22, 2006 to a random sample of 7,000 Texas attorneys stratified into 12 geographical and economic regions of the state. The survey’s response rate was 34.5 percent, with a total of 2,414 attorneys responding. Of the 12 sampling regions, the response rates ranged from 24 percent to 42 percent. Results reported for all respondents were weighted so that the regional breakdown of respondents matched the regional distribution of Texas attorneys who met the sampling criteria.

Salaries of lawyers vary widely. The State Bar study, for example, concluded that lawyers with 16 to 20 years of experience had a median salary of \$201,000, but that a significant number of lawyers had salaries over \$400,000, and some over a million dollars. Lawyers with 11 to 15 years of experience had a median salary of \$120,576, but a number of them had salaries over \$250,000, and some over a million dollars as well.

Figure 3

Salary Distribution of 175 Respondents to 2005 State Bar Survey with 16-20 Years Experience

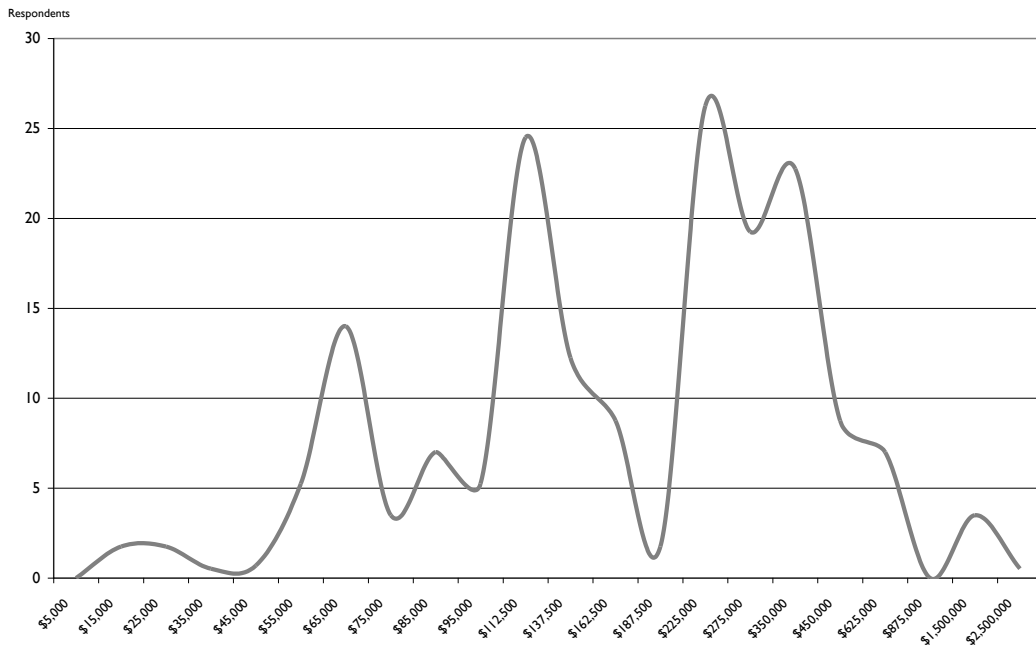
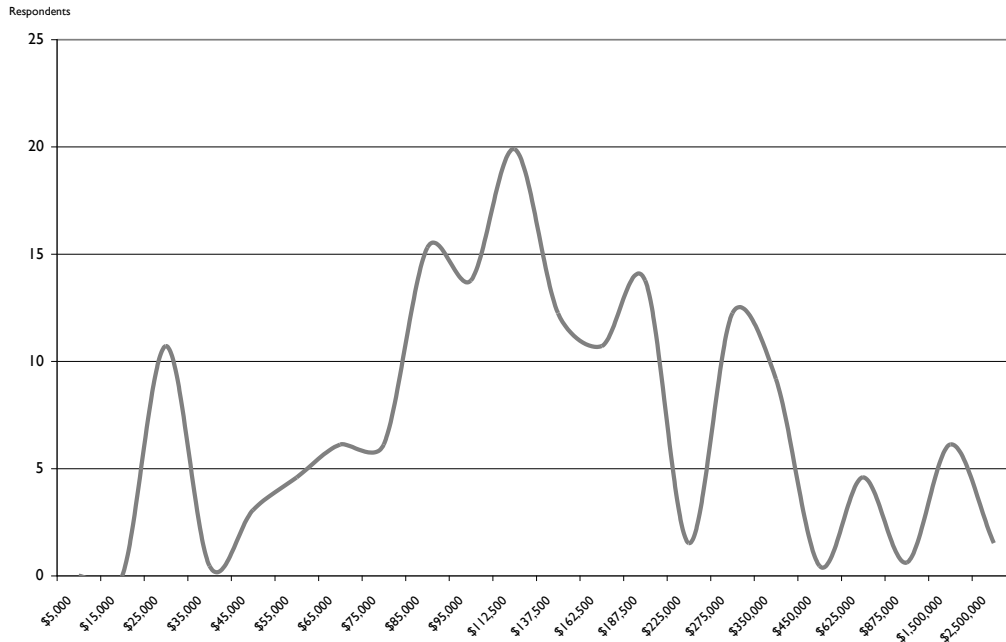


Figure 4

Salary Distribution of 153 Respondents to 2005 State Bar Survey with 11-15 Years Experience



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

Figure 5 reflects the relationship between judicial salaries and the Consumer Price Index for all Urban Workers (CPI-U) and the Employment Cost Index (ECI) from 1991 to present. The 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 ECI is a quarterly measure of changes in labor costs. Both the CPI-U and the ECI are reported by the U.S. Bureau of Labor Statistics.

This graph assumes, but does not establish, that the salaries of judges in 1991 were “proper.” This chart is important, nonetheless, because it depicts the inconsistent and unpredictable changes to judicial salaries over the years, and shows the eroding power of inflation on judicial salaries.

Figure 5

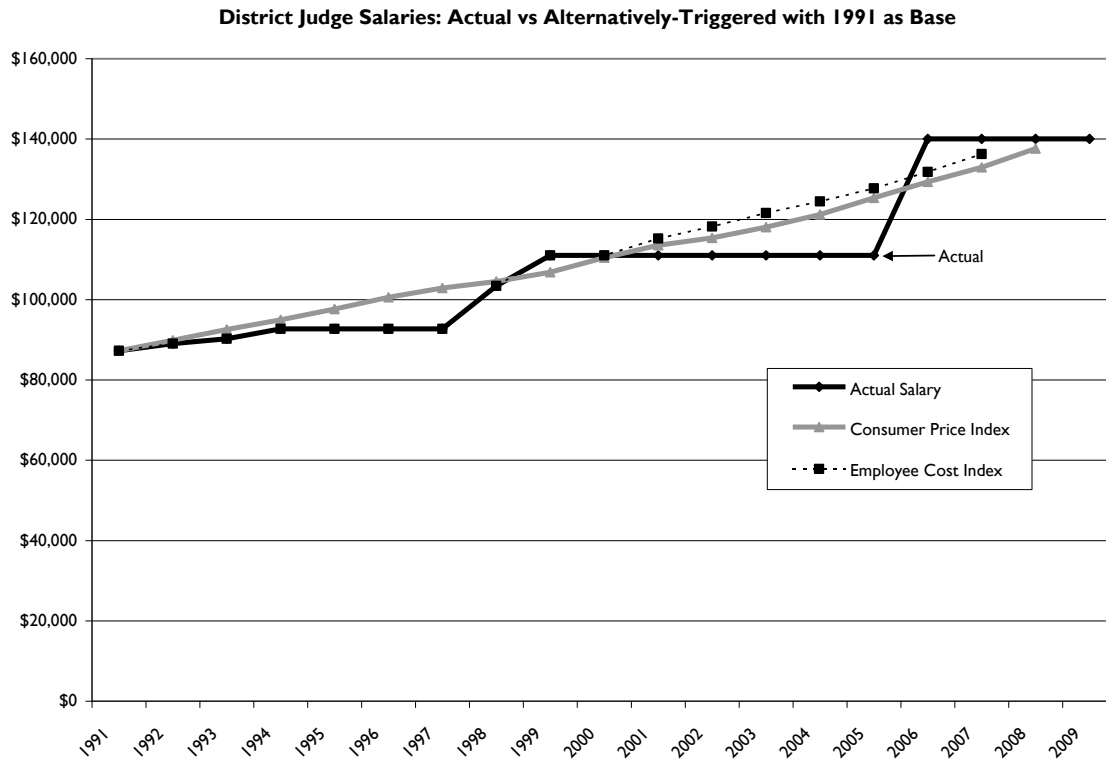


Figure 5 shows that from 1998 to 2005, for example, judicial salaries stayed essentially the same, even as inflation climbed by 20 percent. Just since December 2005, when the last salary adjustment was implemented, inflation has gone up another six percent. This chart also shows that, when increases in judicial salaries over the years have been inconsistent and infrequent, any adjustment has 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 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.

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 below.

Table 4: State Constitutional, Elected and Other High-Ranking Executive Office Holders

Position	Annual Salary
Executive Director: Employees Retirement System	\$ 231,000
Executive Commissioner: Health & Human Services Commission	\$ 200,000
Executive Director: Dept. of Transportation	\$ 192,500
Commissioner: Dept. of State Health Services	\$ 183,750
Executive Director: Dept. of Criminal Justice	\$ 181,500
Commissioner: Texas Education Agency	\$ 180,000
Executive Director: Department of Information Resources	\$ 175,000
Executive Director: Dept. of Public Safety	\$ 157,500
Governor	\$ 150,000
Comptroller of Public Accounts	\$ 150,000
Attorney General	\$ 150,000
Executive Director: Commission on Environmental Quality	\$ 145,200
Commissioner of the General Land Office	\$ 137,500
Railroad Commissioner	\$ 137,500
Agriculture Commissioner	\$ 137,500
Executive Director: Texas Youth Commission	\$ 125,000
Secretary of State	\$ 117,516
<i>Median</i>	\$ 150,000
<i>Average</i>	\$ 161,851

Table 5: Law School Deans (of the 4 public Texas law schools)

University	Annual Salary*
University of Texas	\$ 313,500
University of Houston	\$ 269,085
Texas Southern	\$ 231,090
Texas Tech	\$ 224,188
<i>Median</i>	\$ 250,088
<i>Average</i>	\$ 259,466

* Salary amount reflects state paid portion of total compensation.

Table 6: Public University Chancellors and Presidents

Position	Annual Salary*
Chancellor	\$ 70,231
President	\$ 65,945

* Salary amount reflects state paid portion of total compensation.

Table 7: City Attorneys (14 of 20 most populous Texas cities)

City	Annual Salary
Dallas	\$ 236,004
Lubbock	\$ 195,528
Fort Worth	\$ 189,664
San Antonio	\$ 173,000
Austin	\$ 167,832
Houston	\$ 153,156
Amarillo	\$ 153,000
Garland	\$ 150,804
Grand Prairie	\$ 149,220
Abilene	\$ 130,000
Beaumont	\$ 122,700
Corpus Christi	\$ 121,872
Laredo	\$ 100,006
Pasadena	\$ 99,588
<i>Median</i>	\$ 151,902
<i>Average</i>	\$ 153,027

The Commission had some difficulty in drawing specific guidance from this data, as the salaries vary significantly. For example, Dallas pays its city attorney \$236,004, while Houston pays \$153,156, and Laredo pays \$100,006. Texas pays its own lawyer, the Attorney General of Texas, \$150,000, but pays the deans of its four law schools a median salary of \$250,088 (which salaries are further supplemented in most cases). 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.

Factor 7: Other Factors Traditionally Considered

Survey of Attorneys

In August 2008, the Data Gathering Committee of the Judicial Compensation Commission asked OCA and 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 relating 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 2004/2005 and 2006/2007 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, 2008, 125 judges and justices who served in the state's appellate and district courts left the state judiciary, more than half of whom left voluntarily. Those leaving voluntarily indicated that the most influential factors in their departures were retirement (57 percent), salary (25 percent), and personal reasons (25 percent).⁴ A few judges also indicated that benefits, working conditions, the electoral process, and opportunities for higher public office were important factors in their decisions.

⁴ These results represent 52 of the 68 judges (76.5 percent) who left the judiciary voluntarily who responded to the judicial turnover survey. Respondents were able to select more than one factor.

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 was necessary and appropriate in order to seek to attract the most highly qualified individuals. As noted above 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 that is discussed in Factor 7 above. 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). Virtually 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 discussed above, that it is necessary and appropriate to adjust judicial salaries. Its recommendation is set out in Table 1 on page three of the Executive Summary to this report.

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 \$162,500 to \$175,000. 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.⁵

⁵ See Section 659.102 (a) of the Texas Government Code.

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. A table illustrating the spread between the general trial courts and highest courts for the ten most populous states is attached as Appendix C.

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.

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

Minutes of Meeting

**10 a.m., June 30, 2008
Texas Law Center
Austin, Texas**

I. COMMENCEMENT OF MEETING AND WELCOME

Elizabeth Whitaker called the meeting of the Judicial Compensation Commission (the “Commission”) to order at 10:00 a.m. on Monday, June 30, 2008 at the Texas Law Center in Austin, Texas. Ms. Whitaker confirmed that all the legal requirements to hold the meeting had been met and welcomed guests.

II. ATTENDANCE OF MEMBERS

The following members of the Commission were present: Elizabeth Whitaker, Thomas Harwell, Harold Jenkins, Patrick Mizell, Wanda Chandler-Rohm, Linda Russell, Michael Slack and William Strawn. Ramiro Galindo was not present.

Justice Linda Thomas, Judge Lamar McCorkle, Judge John Dietz, Mike Schofield, Lynn Nabers, Bob Wessels, Clete McAllister, Alice McAfee, Kalyn Laney, Cory Pomeroy, Gary Harger and David Wilkie also were present. Carl Reynolds, Mary Cowherd, Angela Garcia, Margaret Bennett, Meredith Musick and María Elena Ramón of the Office of Court Administration also were present.

III. INTRODUCTION

Ms. Whitaker welcomed guests and introduced the Commission members. Judge Lamar McCorkle gave a brief history of the events that led up to the creation of the Commission and he and Justice Linda Thomas provided a summary of judicial salaries, longevity and retirement. Carl Reynolds summarized and explained the materials provided in the members’ packets.

IV. NATIONAL PERSPECTIVE ON JUDICIAL SALARIES

Mary McQueen, president of the National Center for State Courts, briefed the Commission on the National Center for State Courts and the four standards for setting judicial compensation: equity, regularity, objectivity, and separation from politics. Ms. McQueen then discussed the factors that the Judicial Compensation Commission is charged with considering in its enabling legislation, Chapter 35, Texas Government Code.

The members discussed the information presented by Ms. McQueen. They noted that the complexity of cases in Texas requires an experienced and skilled judiciary. The members were also concerned with the lack of regular salary increases provided to judges and the rank of judicial salaries in Texas compared to other populous states.

V. DISCUSSION

Ms. Whitaker invited guests to comment. Justice Thomas and Judge Dietz both expressed that regular increases should be considered by the Commission. They explained that historically judicial salary increases have been provided on an infrequent basis, thus requiring a very large increase to raise the salaries to a fair and reasonable rate.

The members inquired about the process other states used for determining salaries and discussed the need to collect data on the various factors listed in the Commission's enabling legislation.

VI. ASSIGNMENTS

Ms. Whitaker discussed the Commission's task to have a report prepared by December 1, 2008. She suggested that the following two committees be formed: one to research or gather additional information that the committee will need for its report and another to take public comment regarding judicial compensation in Texas from stakeholders and constituents.

Ms. Whitaker appointed William Strawn and Patrick Mizell to chair the fact gathering committee and Michael Slack to chair the public comment committee. Linda Russell and Thomas Harwell agreed to serve on the fact gathering committee and Harold Jenkins agreed to serve on the public comment committee.

VII. NEXT MEETING/ADJOURNMENT

Ms. Whitaker suggested the Commission hold its next meeting during the first or second week in September and requested that Office of Court Administration staff contact the members to select a date that would be the most convenient.

On motion made by Mr. Harwell, the meeting was adjourned at 12:40 p.m.

Texas Judicial Compensation Commission

Minutes of Meeting

10 a.m., September 8, 2008
Texas Law Center
Austin, Texas

I. WELCOME AND INTRODUCTION

Elizabeth Whitaker called the meeting of the Judicial Compensation Commission (the “Commission”) to order at 10:15 a.m. on Monday, September 8, 2008 at the Texas Law Center in Austin, Texas. Ms. Whitaker introduced Chief Justice Wallace B. Jefferson who then gave brief remarks regarding judicial compensation and the need for a qualified judiciary in Texas and responded to questions posed by the Commission members.

II. ATTENDANCE OF MEMBERS

The following members of the Commission were present: Elizabeth Whitaker, Ramiro Galindo, Harold Jenkins, Patrick Mizell, Linda Russell, Michael Slack and William Strawn. Thomas Harwell and Wanda Chandler-Rohm were not present.

Chief Justice Wallace B Jefferson, Judge John Dietz, Mike Schofield, Lynn Nabers, Alice McAfee, KaLyn Laney, Cory Pomeroy and David Wilkie also were present. Carl Reynolds, Margaret Bennett, Andy Barbee, Angela Garcia and Marilyn Galloway of the Office of Court Administration (OCA) also were present. María Elena Ramón of OCA participated by telephone.

III. APPROVAL OF MINUTES

Linda Russell moved that the minutes of the June 30, 2008 meeting be approved. William Strawn seconded the motion and the motion passed.

IV. REPORT OF THE PUBLIC COMMENT COMMITTEE

Mike Slack, the chair of the Public Comment Committee briefed the Commission on the comments received by the Committee at its August 25, 2008 meeting. The main points and suggestions made at the Public Comment Committee meeting were that all judicial

compensation should be funded from general revenue without any supplementation by the counties, that a hierarchy or salary differential should be maintained among the different levels of judgeships, that judicial salaries should be “delinked” from elected class retirement benefits and that salary adjustments should be regularly considered taking into account increases in the cost of living.

V. REPORT OF THE FACT GATHERING COMMITTEE

Bill Strawn and Patrick Mizell, the co-chairs of the Fact Gathering Committee, presented information regarding other states’ judicial salaries, the age and experience of the Texas judiciary, the salaries of Texas private practitioners and state officers and employees, the results of judicial turnover surveys conducted by OCA, and the results of the survey that was sent to attorneys seeking information about the reasons why they may choose not to seek judicial office.

VI. DISCUSSION

The Commission discussed the information provided by the two committees. Based on the information provided, the members agreed that the state salaries of Texas judges should be adjusted to be more consistent with those of the most populous states and that increases based on the cost of living need to be considered. The Commission also agreed that longevity, judicial retirement and the delinking of elected class retirement benefits from the salary of a district judge should be discussed in its report, but recommendations on these matters will not likely be made for the upcoming biennium.

Ms. Whitaker charged Mr. Strawn and Mr. Mizell with expanding on the priority issues identified by the Commission and providing them to OCA staff for the development of a draft report. It was decided that another meeting should be held in mid-October to discuss a draft report.

VII. NEXT MEETING/ADJOURNMENT

Ms. Whitaker suggested October 15, 2008 for its next meeting and asked OCA staff to check the availability of the Commission members.

On motion made by Mr. Strawn, the meeting was adjourned at 1:35 p.m.

Appendix B: Salary Rankings of 10 Most Populous States

(based on current Texas salaries)

Highest Courts

State	Est. 2007 Population		Unadjusted		Adjusted		
	Pop	Rank	Salary	Rank	Adj. Factor	Salary	Rank
California	36,553,215	1	\$218,237	1	1.391	\$156,897	6
Texas	23,904,380	2	\$150,000	8	0.895	\$167,592	4
New York	19,297,729	3	\$151,200	7	1.269	\$119,123	10
Florida	18,251,243	4	\$161,200	6	1.054	\$152,954	7
Illinois	12,852,548	5	\$189,135	2	0.967	\$195,645	1
Pennsylvania	12,432,792	6	\$181,371	3	1.010	\$179,562	3
Ohio	11,466,917	7	\$141,600	9	0.934	\$151,634	8
Michigan	10,071,822	8	\$164,610	5	0.985	\$167,041	5
Georgia	9,544,750	9	\$167,210	4	0.920	\$181,789	2
North Carolina	9,061,032	10	\$133,576	10	0.959	\$139,306	9

Intermediate Appellate Courts

State	Est. 2007 Population		Unadjusted		Adjusted		
	Pop	Rank	Salary	Rank	Adj. Factor	Salary	Rank
California	36,553,215	1	\$204,599	1	1.391	\$147,093	6
Texas	23,904,380	2	\$145,000	7	0.895	\$162,006	4
New York	19,297,729	3	\$144,000	8	1.269	\$113,450	10
Florida	18,251,243	4	\$153,140	5	1.054	\$145,307	7
Illinois	12,852,548	5	\$178,011	2	0.967	\$184,138	1
Pennsylvania	12,432,792	6	\$171,131	3	1.010	\$169,424	3
Ohio	11,466,917	7	\$132,000	9	0.934	\$141,354	8
Michigan	10,071,822	8	\$151,441	6	0.985	\$153,677	5
Georgia	9,544,750	9	\$166,186	4	0.920	\$180,676	2
North Carolina	9,061,032	10	\$128,011	10	0.959	\$133,502	9

General Jurisdiction Trial Courts

State	Est. 2007 Population		Unadjusted		Adjusted		
	Pop	Rank	Salary	Rank	Adj. Factor	Salary	Rank
California	36,553,215	1	\$178,789	1	1.391	\$128,537	8
Texas	23,904,380	2	\$140,000	5	0.895	\$156,420	2
New York	19,297,729	3	\$136,700	7	1.269	\$107,699	10
Florida	18,251,243	4	\$145,080	4	1.054	\$137,659	5
Illinois	12,852,548	5	\$163,348	2	0.967	\$168,970	1
Pennsylvania	12,432,792	6	\$157,441	3	1.010	\$155,871	3
Ohio	11,466,917	7	\$121,350	8	0.934	\$129,949	7
Michigan	10,071,822	8	\$139,919	6	0.985	\$141,985	4
Georgia	9,544,750	9	\$120,252	10	0.920	\$130,737	6
North Carolina	9,061,032	10	\$121,053	9	0.959	\$126,246	9

Appendix B: Salary Rankings of 10 Most Populous States

(based on proposed Texas salaries)

Highest Courts

State	Est. 2007 Population		Unadjusted		Adjusted		
	Pop	Rank	Salary	Rank	Adj. Factor	Salary	Rank
California	36,553,215	1	\$218,237	1	1.391	\$156,897	6
Texas	23,904,380	2	\$163,000	6	0.895	\$182,123	2
New York	19,297,729	3	\$151,200	8	1.269	\$119,123	10
Florida	18,251,243	4	\$161,200	7	1.054	\$152,954	7
Illinois	12,852,548	5	\$189,135	2	0.967	\$195,645	1
Pennsylvania	12,432,792	6	\$181,371	3	1.010	\$179,562	4
Ohio	11,466,917	7	\$141,600	9	0.934	\$151,634	8
Michigan	10,071,822	8	\$164,610	5	0.985	\$167,041	5
Georgia	9,544,750	9	\$167,210	4	0.920	\$181,789	3
North Carolina	9,061,032	10	\$133,576	10	0.959	\$139,306	9

Intermediate Appellate Courts

State	Est. 2007 Population		Unadjusted		Adjusted		
	Pop	Rank	Salary	Rank	Adj. Factor	Salary	Rank
California	36,553,215	1	\$204,599	1	1.391	\$147,093	6
Texas	23,904,380	2	\$155,500	5	0.895	\$173,743	3
New York	19,297,729	3	\$144,000	8	1.269	\$113,450	10
Florida	18,251,243	4	\$153,140	6	1.054	\$145,307	7
Illinois	12,852,548	5	\$178,011	2	0.967	\$184,138	1
Pennsylvania	12,432,792	6	\$171,131	3	1.010	\$169,424	4
Ohio	11,466,917	7	\$132,000	9	0.934	\$141,354	8
Michigan	10,071,822	8	\$151,441	7	0.985	\$153,677	5
Georgia	9,544,750	9	\$166,186	4	0.920	\$180,676	2
North Carolina	9,061,032	10	\$128,011	10	0.959	\$133,502	9

General Jurisdiction Trial Courts

State	Est. 2007 Population		Unadjusted		Adjusted		
	Pop	Rank	Salary	Rank	Adj. Factor	Salary	Rank
California	36,553,215	1	\$178,789	1	1.391	\$128,537	8
Texas	23,904,380	2	\$148,000	4	0.895	\$165,363	2
New York	19,297,729	3	\$136,700	7	1.269	\$107,699	10
Florida	18,251,243	4	\$145,080	5	1.054	\$137,659	5
Illinois	12,852,548	5	\$163,348	2	0.967	\$168,970	1
Pennsylvania	12,432,792	6	\$157,441	3	1.010	\$155,871	3
Ohio	11,466,917	7	\$121,350	8	0.934	\$129,949	7
Michigan	10,071,822	8	\$139,919	6	0.985	\$141,985	4
Georgia	9,544,750	9	\$120,252	10	0.920	\$130,737	6
North Carolina	9,061,032	10	\$121,053	9	0.959	\$126,246	9

Appendix C: Salary Spread Between General Trial Courts and Highest Courts for the Ten Most Populous States

(Salaries reflect total compensation and are not adjusted for cost-of-living comparisons. Texas salaries are current)

Pop Rank	State	General	Intermediate	Highest	% Spread Dist to High
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	\$145,080	\$153,140	\$161,200	11.1%
5	Illinois	\$163,348	\$178,011	\$189,135	15.8%
6	Pennsylvania	\$157,441	\$171,131	\$181,371	15.2%
7	Ohio	\$121,350	\$132,000	\$141,600	16.7%
8	Michigan	\$139,919	\$151,441	\$164,610	17.6%
9	Georgia	\$120,252	\$166,186	\$167,210	39.0%
10	North Carolina	\$121,053	\$128,011	\$133,576	10.3%

Appendix C: Salary Spread Between General Trial Courts and Highest Courts for the Ten Most Populous States

(Salaries reflect total compensation and are not adjusted for cost-of-living comparisons. Texas salaries are based on Commission recommendations.)

Pop Rank	State	General	Intermediate	Highest	% Spread Dist to High
1	California	\$178,789	\$204,599	\$218,237	22.1%
2	Texas	\$148,000	\$155,500	\$163,000	10.1%
3	New York	\$136,700	\$144,000	\$151,200	10.6%
4	Florida	\$145,080	\$153,140	\$161,200	11.1%
5	Illinois	\$163,348	\$178,011	\$189,135	15.8%
6	Pennsylvania	\$157,441	\$171,131	\$181,371	15.2%
7	Ohio	\$121,350	\$132,000	\$141,600	16.7%
8	Michigan	\$139,919	\$151,441	\$164,610	17.6%
9	Georgia	\$120,252	\$166,186	\$167,210	39.0%
10	North Carolina	\$121,053	\$128,011	\$133,576	10.3%