

COMMISSION ON JUDICIAL COMPENSATION

REPORT TO THE GENERAL ASSEMBLY

January 2013

Table of Contents

| | | |
|------|---|----|
| I. | Introduction..... | 4 |
| II. | Executive Summary | 5 |
| III. | The Statute: Its Charge to the Commission | 9 |
| IV. | The Commission's Process | 10 |
| V. | Discussion of the Seven Statutory Factors..... | 12 |
| | Factor 1. The Overall Economic Climate of the State <i>and</i> | 13 |
| | Factor 7. The State's Ability to Fund Increases in Compensation..... | 13 |
| | The Economic Outlook | 13 |
| | The Budget Outlook..... | 15 |
| | Judicial Salaries as a Proportion of the Budget | 15 |
| | The Cost of the Proposed Increase..... | 16 |
| | Factor 2. The Rate of Inflation | 18 |
| | Data Sources | 18 |
| | Inflation Projectors..... | 19 |
| | Factor 3. Levels of Compensation Received by Judges of Other States and of the Federal Government | 21 |
| | State Judicial Salaries at a Glance | 21 |
| | Alternative Adjustments to State Judicial Benchmarks..... | 22 |
| | Federal Judicial Compensation..... | 23 |
| | The Impact of Connecticut's Longevity Pay | 23 |
| | Other Elements of Compensation | 24 |
| | Other Considerations | 26 |

| | |
|--|----|
| Factor 4. Levels of Compensation Received by Attorneys Employed by Government Agencies, Academic Institutions, and Private and Nonprofit Organizations | 28 |
| Lawyers Employed By The State | 28 |
| Lawyers In Academic Institutions | 28 |
| Lawyers in the Private Sector | 29 |
| Pensions | 30 |
| Relevance of these Comparisons | 30 |
| Factor 5. The State's Interest in Attracting Highly Qualified and Experienced Attorneys to Serve in Judicial Capacities | 31 |
| Factor 6. Compensation Adjustments Applicable to Employees of the State During Applicable Fiscal Years | 33 |
| Historical – Judges Compared to State Employees | 33 |
| Prospective – Judges Compared to State Employees | 34 |
| VI. Conclusions..... | 36 |
| The State’s Economic Climate and Ability to Afford Raises – Factors 1 & 7 | 36 |
| The Effect of Inflation – Factor 2 | 36 |
| Federal judges and judges of others states – Factor 3..... | 37 |
| Other Lawyers – Narrowing the Gap – Factor 4..... | 37 |
| Attracting Applicants – Factor 5..... | 37 |
| Equity With Other State Employees – Factor 6..... | 38 |
| Phased In Partial Adjustments Is A Fair Approach | 38 |
| The Commission’s Recommendation is Reasonable..... | 39 |
| VII. Recommendations | 41 |
| VIII. Closing | 43 |
| APPENDIX..... | 45 |

I. **INTRODUCTION**

The Commission on Judicial Compensation, pursuant to its charge under Public Act 12-93, is pleased to submit this report of its findings, in accordance with section 11-4a of the general statutes, to the Governor, the Secretary of the Office of Policy and Management, the General Assembly, the Chief Justice of the Supreme Court, and the Chief Court Administrator.

II. EXECUTIVE SUMMARY

During the 2012 session, the legislature created a Commission on Judicial Compensation to examine and make recommendations with respect to judicial compensation and report no later than January 2, 2013.

This document is the Commission's report and contains the Commission's recommendations.

The legislation requires the Commission to take into account "all appropriate factors" including seven factors specifically identified. Some of those factors are financial, including the overall economic climate in the state (Factor 1) and the state's ability to fund increases in compensation (Factor 7).

The Commission is aware of the state's financial situation, which has changed for the worse since the Commission began its work. We understand that to some people, the budget situation is the beginning and end of the discussion and that there should be no consideration of raises.

But the legislature's direction to the Commission was to consider all the factors, not just one or two. Those other factors include the rate of inflation (Factor 2), raises for other state employees (Factor 6), comparisons with the judges in federal courts and judges in other states (Factor 3), the compensation of other attorneys in public service and the private sector (Factor 4), and the state's interest in attracting highly qualified and experienced attorneys to serve in judicial capacities (Factor 5).

Each Factor is discussed in detail in its own section below. In those sections, the report aims to present all of the key data available to the Commission, without limiting the discussion to data that supports a particular outcome.

Among the data assembled by the Commission is historical information.

The last time the Connecticut General Assembly voted to raise judges' salaries was in May 2004. Three years of raises were approved. The last raise was January 1, 2007 (FY 07). As a result, a Superior Court judge's salary has remained at \$146,780 for six years.

During the six years in which judges had no raises, inflation has been approximately 13.2%. (See Factor 2).

During the same period, other state employees have received raises. If judges had received the same raises as Executive Branch managers since 2007, a Superior Court judge's salary would now be approximately \$164,144 (see Factor 4).

The relative pay of Connecticut's judges when compared to judges in other states has fallen from 32nd in 2006 to 46th (See Factor 3).

The Commission looked at a variety of benchmarks as required by the statute. Not surprisingly, those benchmarks varied considerably. They are explained in the substantive sections of the Report, but the following table illustrates some of the key ones.

| <u>Benchmark</u> | <u>Benchmark Salary</u> | <u>Report Section</u> |
|--|---|------------------------------|
| Superior Court judge's current salary (since 1/1/07) | \$146,780 | |
| 2012 salary if adjusted for inflation since 2007 (2.2% average annual CPI-U increase) | \$163,652 | Factor 2 |
| 2012 salary necessary for CT judges to be at nationwide median (25th out of 50), adjusted for cost of labor differences between states | \$154,548 | Factor 3 |
| 2012 salary if CT judges had received the average increase given to judges throughout the country since 2003 | \$156,681 | Factor 3 |
| New York state trial judges, April 2013 | \$167,000 | Factor 3 |
| New York state trial judges, April 2014 | \$174,000 | Factor 3 |
| Federal trial judges | \$174,000 | Factor 3 |
| 2012 salary necessary for CT judges to be at nationwide median (25th out of 50), adjusted for cost of living differences between states | \$176,225 | Factor 3 |
| Junior partners, CT largest firms | \$160,000 - \$240,000 | Factor 4 |
| Tenured faculty, UConn Law School | \$176,997 | Factor 4 |
| Future salary if adjusted at SEBAC 2011 rates (OFA estimates for union employees is 4.1% annual, including increments and merit increases) | FY14: \$152,798 FY15: \$159,063 FY16: \$165,585 | Factor 6 |
| Future salary if adjusted using OFA estimates for non-union employees (5.9% annual, including increments and merit increases) | FY14: \$155,440 FY15: \$164,611 FY16: \$174,323 | Factor 6 |
| 2012 salary if adjusted at rate of Executive Branch manager increases since 2007 | \$164,144 | Factor 6 |
| 2012 salary if adjusted at rate of Executive Branch manager increases since 2003 | \$175,643 | Factor 6 |

On October 3, 2012 the Chief Justice submitted to the Commission a report containing data related to the seven statutory factors and proposing salary adjustments. The Chief Justice proposed to adjust salaries, effective July 1, 2013 (FY 14), for increases in the cost of living since 2003. This inflation rate is lower than the rate of increases received by other state employees during the same period.

The Chief Justice further proposed that, for the next three years, judicial salaries should increase by the same percentage as the majority of unionized state employees, which she estimate as approximately 5.5% per year.

The Commission considered the Chief Justice's proposal along with all of the data assembled under all seven statutory factors. In light of the state budget and the overall economic climate, the Commission concludes that the Chief Justice's recommendations are not appropriate.

However, the Commission also concludes it would be equally inappropriate to do nothing. There is no principled justification for the large disparity between the treatment of judges and other state employees for the last decade. The work of judges has not become less valuable relative to other state employees or to lawyers in other public positions or private practice during that period. The Commission concludes that judicial salaries should be raised.

The Commission looked at the historical raises for other state employees and concluded it was not feasible in this economic environment to give judges raises equivalent to the raises received by other state employees. Instead, the Commission looked to the historical inflation factor and, within that factor, considered the "cost of labor" and the "cost of living." Using the "cost of labor" produces lower rises than would have been required to compensate for increases in the cost of living.

Although there is a legitimate argument that an adjustment for ten years of discrepancies should be made all at once, the Commission concludes that such a significant adjustment in one year was not appropriate in the current economic environment.

Looking to the future, it certainly could be argued that Judges should get the same future increases that the SEBAC agreement gives to other state employees. Again, the Commission concluded that an adjustment of that magnitude is not appropriate in the current economic environment. However, it would be equally inappropriate to ignore the effect of future inflation. The Commission recommends that the adjusted salaries for future years at least take into account the projected future inflation of 2%.

After considering all of the above, the Commission recommends four annual 5.3% increases for all of the judicial officers specified in PA 12-93. Such increases produce the following recommendation for Superior Court Judges' salaries:

Superior Court Judges' Salary

| Fiscal Year | Chief Justice's Proposal | Commission's Recommendation |
|---|---------------------------------|------------------------------------|
| 2014 (July 1, 2013 to June 30, 2014) | \$163,416 | \$154,559 |
| 2015 (July 1, 2014 to June 30, 2015) | \$172,404 | \$162,751 |
| 2016 (July 1, 2015 to June 30, 2016) | \$181,886 | \$171,377 |
| 2017 (July 1, 2016 to June 30, 2017) | \$191,890 | \$180,460 |

Although individual Commissioners had different views on how to weigh the methods for analyzing and synthesizing the data and some believe that the recommended salary increases should be either higher or lower, the Commissioners are unanimous in supporting this recommendation. The Commission identified several independent grounds justifying the recommended increases. For example:

- To address inflation:
 - 3.3% each year to phase in the elimination of the 13.2% historical inflationary gap, and
 - an additional 2% for projected inflation.
- To bring judicial salaries to the national median, adjusted for the cost of labor (the recommended \$154,559 FY 14 salary is within \$11 of the national median, adjusted for the cost of labor); counterbalance the freezing of longevity pay and imposing the 3% annual deductions for retiree health insurance that will be phased in over the next 3 fiscal years; and keep pace with future inflation.
- To keep pace with other state employees:
 - Estimates for upcoming total increases for state employee range from 4.1% (for unionized employees) to 5.9% (for non-unionized employees).

In the end, no single line of reasoning won over every Commissioner, yet for reasons described more fully in Section VI. Conclusions, the Commission believes that this recommendation is consistent with all of the other factors it was required to consider, including the financial factors.

III. THE STATUTE: ITS CHARGE TO THE COMMISSION

The commission was formed pursuant to Public Act 12-93, *An Act Establishing a Commission on Judicial Compensation*. The statute charges the commission with “examining and making recommendation with respect to judicial compensation” and requires a report from the commission with its recommendations no later than January 2, 2013. The members were, by statute, appointed by the Governor, the Chief Justice, and six leaders of the Legislature. The last of the commissioners was appointed on October 1, 2012.

The statute states that, in conducting its examination, the commission should take into account “all appropriate factors” including seven specific factors identified in the Public Act:

- (1) The overall economic climate in the state;
- (2) the rate of inflation;
- (3) the levels of compensation received by judges of other states and of the federal government;
- (4) the levels of compensation received by attorneys employed by government agencies, academic institutions, and private and nonprofit organizations;
- (5) the state's interest in attracting highly qualified and experienced attorneys to serve in judicial capacities;
- (6) compensation adjustments applicable to employees of the state during applicable fiscal years; and
- (7) the state's ability to fund increases in compensation.

The commission organized its work around those factors, and this report sets out the commission’s findings as to each of them.

IV. THE COMMISSION'S PROCESS

The commission held its first meeting on October 2, 2012 and worked intensively through the fall of 2012 to conduct background investigation and research, invite public input, and perform the deliberations necessary to arrive at its recommendations. The commission held six meetings: on October 2, October 25, November 8, November 20, December 10, and December 18. The commission sought input from all organizations interested in its work. Those included an initial report by the Chief Justice and a presentation by her at the October 25, 2012 meeting.

The commission also invited presentations by interested organizations at its November 20 meeting, reaching out to all persons who had provided testimony to the Legislature on the proposed bill to create the commission. Those making presentations in person to the commission were:

- Alan Calandro, Office of Fiscal Analysis
- Hon. Richard Arnold, President, Judges Association
- Robert Bello, Chair, Judicial Selection Commission
- Barry Hawkins, President, Connecticut Bar Association
- John Rathgeber, President, Connecticut Business and Industry Association
- Zisca St. Clair, George Crawford Black Bar Association
- Mario Borelli, Connecticut Hispanic Bar Association

In response to the commission's invitation, many others provided written submissions regarding the commission's charge, including: The Chief State's Attorney; the Chief Public Defender; the Federation of Connecticut Taxpayer Organizations; the Connecticut Trial Lawyers Association; the Connecticut Criminal Defense Lawyers Association; the Greater Bridgeport Bar Association; the George Crawford Black Bar Association; the Connecticut Hispanic Bar Association; the Connecticut Asian Pacific American Bar Association; the South Asian Bar Association of Connecticut; Greater Hartford Legal Aid, Inc., Connecticut Legal Services, Inc., Legal Assistance Resource Center of Connecticut, Inc., and New Haven Legal Assistance Association, Inc. Besides these, the commission invited input from The Connecticut NAACP; The League of Women Voters; and the Yankee Institute for Public Policy.

In addition to these presentations and submissions, members of the commission took the initiative to research and investigate a multitude of issues related to our charge. Those included research into the state's economy, inflation rates, studies of judicial compensation in other states, the value of judicial pensions, and compensation paid to other lawyers in the public and private sectors. The commission also submitted multiple inquiries to state bodies, including the Judicial Branch, the Office of Legislative Research, the Office of Fiscal Analysis, and the Commission on Judicial Selection, and made use of the information provided by those entities.

The commission was fortunate to have the support and prompt input from all of these sources, and was blessed with members chosen by the appointing authorities who proactively sought out the information needed to address the issues in our charge from the legislature.

V. DISCUSSION OF THE SEVEN STATUTORY FACTORS

As noted above, the statute creating the Commission specifies the factors we were to consider. Each factor is discussed separately below with the exception that we have combined Factor 1, the Overall Economic Climate of the State with Factor 7, the State's Ability to Fund Increases in Compensation. The Commission felt these two factors were inexorably intertwined.

The material provided under each factor includes information provided by the Judicial Branch but also includes substantial additional information provided at the request of the Commission from the Judicial Branch, the Offices of Fiscal Analysis, the Office of Legislative Research, and other public agencies and resources. In addition, individual commissioners compiled data available to them in their individual or professional capacity and, in some cases, were able to request and obtain relevant data from other sources. The sources of all the data presented are identified in the text or in footnotes.

The material included under each factor below is the Commission's good faith effort to be comprehensive, rather than selective. In other words, the Commission has not limited the information to only those items which support the recommendation. Rather, the Commission has also included information which some readers could reasonably point to as supporting a different conclusion.

The members of the Commission have reviewed this information individually and have discussed it collectively in public meetings in an effort to understand, analyze, and synthesize all the data to produce an overall recommendation. Section VI. Conclusions discusses how the factors led to the Recommendations in Section VII.

Factor 1. The Overall Economic Climate of the State and

Factor 7. The State's Ability to Fund Increases in Compensation

As it determines the appropriate compensation of the State's judges for the next four years, Public Act 12-93 requires the Commission to consider the economic condition of Connecticut and the State's ability to fund an increase in compensation. To guide them in assessing the state's economic climate and fiscal condition, the Commission relied on the following professional publications and primary budget documents and forecasts issued by state agencies.

The Economic Outlook

The Organization for Economic Cooperation and Development on Nov. 27, 2012 sharply cut its forecast for the world economy. The organization, based in Paris, predicted that gross domestic product (GDP) in the world's developed economies would expand 1.4% in 2013, significantly below the forecast of 2.2% it made just six months ago. The international group expects the U.S. economy to grow 2% in 2013 and 2.8% in 2014. That is much stronger growth than predicted for Europe or Japan. (<http://www.nytimes.com/2012/11/28/business/global/oecd-slashing-growth-outlook-warns-of-global-recession.html>)

The Bureau of Economic Analysis (BEA) announced on Nov. 29, 2012 that U.S. real GDP increased at an annual rate of 2.7% in the third quarter of 2012. In the second quarter, real GDP increased by 1.3%. Also, corporate profits in the 3rd quarter increased by \$66.7 billion compared with an increase of \$21.8 billion in the 2nd quarter. (<http://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>)

The performance of Connecticut's economy is directly linked to the nation's performance. National economic growth will translate into an improving Connecticut profile.

The New England Economic Partnership (NEEP) a non- profit has for over 25 years issued economic forecasts for New England and its individual states. The NEEP Connecticut Economic Outlook: 1ST Quarter 2012 - 4th Quarter 2016 issued on Dec. 7, 2012 is managed by Edward J. Deak, Professor of Economics, Emeritus, Fairfield University (see appendix).

Highlights:

- Connecticut employment peaked at 1.712 million jobs in March 2008 and hit bottom in February 2010 at 1.595 million, with a loss of 117,000 jobs. Through September 2012, Connecticut has regained 31,500 positions or 26.7% of the lost jobs.
- A combination of modest U.S. growth(U.S. RGDP 2.1%) and even more modest Connecticut growth(1.6%) could limit the state's annual job gains to 4,900 positions in 2012 after rising by 15,000 in 2011.
- Job increases of 5,600 and 22,300 are expected in 2013 and 2014. Thereafter jobs should rise steadily, reaching 1.719 million in 2016:Q4, 7,900 above the peak in 2008.

- The NEEP Intermediate Forecast (FY 2015-2016) projects that U.S. employment should grow by an average of 2.8% and 2.2% but Connecticut job gains will be more modest at 1.8% and 1.5% per year.

Federal Reserve Bank of Boston, *Update on the New England Economy*, Nov. 7, 2012
(<http://www.bos.frb.org/economic/neppc/presentations/2012/sassermodestino110712.pdf>).

Highlights:

- New England is expected to grow slower than the nation on average through 2016. U.S. growth rate: 3.1%; New England 2.8%; Connecticut, at 3.2% is projected to outpace both the U.S. and New England.
- The unemployment rate was unchanged in New England at 7.4% but rose in Connecticut to 8.6%.
- Overall, New England consumer confidence jumped in October and is now higher than the U.S.
- Housing prices increased in the U.S. by 3.1%, dropped in N.E. by 1.2% and dropped in Connecticut by 4.6%
- Housing permits are expected to rise from a low of 3,173 in 2011 to 4,682 units in 2012, a 47% increase. For 2015-2016, permits will rise from 7,853 units to 8,557 units which is still 3,600 units below the 2005 peak.

"The Quarterly Forecast: Economic Cliffhanger," *The Connecticut Economy*, Winter 2013
(http://cteconomy.uconn.edu/TCE_Issues/Winter_2013.pdf).

Highlights:

- The consensus among the 50 economists surveyed by the *Wall Street Journal* calls for another lull in growth until the second half of 2013.
- The *Wall Street Journal* survey lays out three possible growth scenarios:
 - 1) If the US economy grows at 2.7% next year, then Connecticut will gain 7,500 by year's end;
 - 2) if the U.S. economy slows to a 1.4% growth rate in fourth quarter of 2012 then rises to 2.2% for next year, Connecticut will add 4,000 jobs; and
 - 3) if the US economy grows at a more optimistic rate of 3.5% then Connecticut will add 10,000 jobs next year.

The Budget Outlook

The Office of Policy and Management and the Office of Fiscal Analysis issued their consensus revenue estimates for FY13- FY16 on November 9, 2012

(http://www.ct.gov/opm/lib/opm/budget/consensusrevenue/fy2013/final_consensus_november_2012.pdf).

Consensus Revenue Estimates (in millions):

| | |
|---------|------------|
| FY 2013 | \$19,015.1 |
| FY 2014 | \$19,723.6 |
| FY 2015 | \$21,032.3 |
| FY 2016 | \$22,136.6 |

The Office of Fiscal Analysis issued its Fiscal Accountability Report on November 15, 2012

(http://www.cga.ct.gov/ofa/Documents/year/FF/2013FF-20121115_Fiscal%20Accountability%20Report%20FY%2013%20-%20FY%2016.pdf).

Budget Outlook (in millions):

| | | | |
|------|-----------|---------|----------------------|
| FY13 | \$320.7 | Deficit | 1.7% of total budget |
| FY14 | \$1,138.1 | Deficit | 5.5% of total budget |
| FY15 | \$1,016.4 | Deficit | 4.6% of total budget |
| FY16 | \$934.1 | Deficit | 4.0% of total budget |

On November 28, 2012 Governor Malloy submitted a deficit mitigation plan based on a \$365 million FY13 shortfall

(http://www.ct.gov/opm/lib/opm/budget/2012_2013_biennial_budget/DeficitMitigationPlan/RescissionTransmittalMemo_11282012.pdf).

On December 3, 2012 the Office of the State Comptroller projected a \$415 million deficit for FY13 (<http://www.osc.ct.gov/public/pressrl/2012/December2012FinancialUpdate.pdf>).

The economic assumptions supporting the various state agencies' budget forecasts of are contained in Appendix. It should be noted that OFA estimates Connecticut's Gross State Product (GSP): FY13... 2.4%, FY14... 3.7%, FY15... 4.4%, FY16... 3.9%.

Judicial Salaries as a Proportion of the Budget

The table below illustrates that the budget of the Judicial Branch as a proportion of General Fund expenditures is unchanged at 2.5% compared to a decade ago.

By contrast, the portion of the budget devoted to judicial salaries has decreased both as a percentage of General Fund expenditure (from 0.21% to 0.17%) and as a percentage of the Judicial Branch budget (from 8.5% to 6.7%).

**Judges Salaries as a Percentage Of
State General Fund Expenditures and Branch Expenditures
FY2003 vs. FY2013¹**

| | <u>FY2003</u> | <u>FY 2013</u> |
|---|----------------------|-----------------------|
| Total Expenditures -- General Fund | 13.6 billion | 19.1 billion* |
| Total Expenditures -- Branch | \$335.6 million | \$478.3 million* |
| Branch as a % of State | 2.5% | 2.5% |
| Judge's salaries as a % of General Fund | 0.21% | 0.17% |
| Judge's salaries as a % of Judicial Branch | 8.5% | 6.7% |

**estimated*

The Cost of the Proposed Increase

The cost of the proposed increases in judicial salaries was computed using a conservative assumption that all judicial vacancies will be filled for the full year. Similar assumptions were made for the other Judicial Branch officers covered by the Commission's recommendations. In reality, the actual cost will be less. According to the Judicial Branch, in October 2012, there were 201 authorized justices and judges of the Supreme, Appellate, and Superior Courts. Only 170 of these positions are currently filled and not all vacancies are presently funded.²

Using this assumption, the additional cost year over year is projected to be:³

| Fiscal Year | Additional Cost of Salary over the Prior Fiscal Year |
|---|---|
| 2014 (July 1, 2013 to June 30, 2014) | \$1,804,533 |
| 2015 (July 1, 2014 to June 30, 2015) | \$1,900,174 |
| 2016 (July 1, 2015 to June 30, 2016) | \$2,000,883 |

¹ Farley, Melissa, E-mail to Timothy Fisher re: Judges as a Percent, December 11, 2012. The data excludes Public Defenders.

² Judicial Branch, Judicial Compensation Commission Answers Provided by the Judicial Branch to Questions Regarding Judicial Branch Report and Related Data, October 22, 2012, p. 13.

³ Based on OFA projections, see appendix for detailed breakdown of salary figures.

| | |
|---|-------------|
| 2017 (July 1, 2016 to June 30, 2017) | \$2,106,930 |
|---|-------------|

To put this cost in context, the FY2014 increase constitutes an increase of 0.4 % over the Judicial Branch's total expenditures for FY2013. As a percentage of the General Fund expenditures, it is an increase of 0.01 %.

Although not within the Commission's charge, it should also be noted that increases to Superior Court Judges' salaries will also increase the salaries of Workers' Compensation Commissioners and Judges of Probate.⁴ The "Additional Cost of Salary" in the table above does not include the subsequent salary increases for Workers' Compensation Commissioners (totaling approximately \$538,876 over the four fiscal years). Salaries for these officials are not paid from the Judicial Branch's budget or the state's General Fund. The figures above do include the impact on salaries in the Probate Court system, although the Probate Courts' expenses are funded largely by Probate Court fees with some supplementation from the General Fund.

The Commission recognizes that the amounts set forth in the "Additional Cost" table above are not insignificant. The Commission also recognizes that the proposed raises for Judges and other judicial officers must compete with other worthy budgetary causes. For all the reasons set forth throughout this report, the Commission believes these increases are warranted and that the Legislature can and should find a way to fund them.

⁴ See CGS § 31-277 for Compensation Commissioners and CGS §45a-95a for Judges of Probate.

Factor 2. The Rate of Inflation

In examining the need to adjust judicial compensation, the Commission considered the rate of inflation that actually occurred during fiscal years 2007 through 2012, during which time the state judges received no salary increases.

The Commission also referenced expert projections of the likely inflationary rate for the next four fiscal years.

Data Sources

Today, the U.S. Consumer Price Index for all urban consumers (CPI-U⁵) is the primary and most common gauge for measuring inflation. While CPI-U rose at an average annual rate of 3.73% between 1950 and 2011, the present rate of inflation is well below that long-term average. Further, the 2009 drop of 0.4% in the CPI-U lies in sharp contrast to the 1950-2011 average because of deflation stemming from the worst recession since World War II. As of October 2012, CPI-U has risen just 2.2% on a cumulative year-to-date basis.⁶ The declines of the CPI-U over the last several years is tied to slow growth in incomes, meager job expansion, and continued weakness with housing.⁷

For the period 2007-2011, U.S. Department of Labor data shows that CPI-U averaged 2.2% annually. The Chief Justice's report on page 8 depicts average annual CPI-U slightly higher at 2.3% for this same period. In addition, during this five-year period, the Employment Cost Index annual average, as reported by the Judicial Branch, was a very similar 2.28%. ECI is reported quarterly by the U.S. Department of Labor and measures the growth of employee compensation or cost of labor (i.e., wages and benefits). The relationship between CPI and ECI is that as wage pressures increase, so does inflation because compensation tends to increase before companies increase prices for consumers. The next section, Factor 3, explains ECI in more detail.

Economists have long used a tool for helping assess future levels of inflation, or changes in consumer prices. Called the Phillips Curve, it essentially depicts the inverse relationship between the rate of unemployment and the rate of inflation in an economy. Simply stated, the

⁵ The U.S. Consumer Price Index(CPI) is a measure of the price level of consumer goods and services. The Bureau of Labor Statistics, which started the statistic in 1919, publishes the CPI on a monthly basis. The CPI is calculated by observing price changes among a wide array of products and services in urban areas and weighing these price changes by the share of income consumers spend purchasing them. The resulting statistic, measured as of the end of the month for which it is published, serves as one of the most popular measures of U.S. inflation. The Consumer Price Index for All Urban Consumers (CPI-U), introduced in 1978, is representative of the buying habits of approximately 80 percent of the non-institutional U.S. population. The index measures inflation faced by consumers who live in urban areas designated by the U.S. Bureau of the Census.

⁶ U.S. Department of Labor, Bureau of Labor Statistics, November 15, 2012 Report

⁷ Bureau of Labor Statistics (Seasonally Adjusted Data)

lower the unemployment rate is in a given economy, the higher the rate of inflation. Conversely, the higher the rate of unemployment, the lower the inflationary rate.⁸

Inflation Projectors

Today, the consensus of economic opinion is that unemployment will remain high over the next several years by historical standards, implying less inflation. In fact, pronounced deflationary effects have been recorded in housing prices and stock prices in recent years, representing actual declines in prices.⁹

Data issued by the U.S. Bureau of Labor Statistics shows that long-term U.S. unemployment has averaged 5.8% for the period between 1950 and 2011. However, unemployment has surged far above this average and now stands at 7.9% as of October 2012.¹⁰ Moreover, according to the Federal Reserve, unemployment is expected to remain problematic. Economic projections from the Federal Reserve in June 2012 show that the U.S. has been struggling through the weakest economic recovery it has seen, and the Federal Reserve projects more sluggish growth and high unemployment ahead.¹¹

Using the relationships established by the Phillips Curve, the implication is that inflationary pressures are apt to be rather subdued over the next several years. New projections from the Federal Reserve show that consumer inflation as measured by the Personal Consumption Expenditure Deflator (PCE) is likely to remain near the Fed's 2% target through 2014. In addition, the U.S. Congressional Budget Office (CBO), an objective source of economic and fiscal projections, now projects CPI-U to remain below 2% annually through 2015.

Turning to regional CPI-U data, inflation in the Northeast is slightly higher than that of the nation due to the higher cost of living. According to data from the Bureau of Labor Statistics, overall CPI-U for the Northeast region comprising New York, New Jersey, Long Island, and Connecticut between 1950 and 2011 was 3.83%, about one-tenth of a percentage point higher than the national average of 3.73%. One local professional economist's opinion is that the regional CPI-U will show minimally higher rates relative to the nation, and also remain in the 2% range for the next several years.¹²

⁸ The Concise Encyclopedia of Economics: Phillips Curve by Kevin D. Hoover.

⁹ Research prepared by Don Klepper-Smith, Chief Economist & Director of Research, DataCore Partners, LLC, New Haven, CT, August 2012.

¹⁰ U.S. Bureau of Labor Statistics , Seasonally Adjusted.

¹¹ CBS News Video (July 31, 2012).

¹² Economist Don Klepper-Smith.

Therefore, the historical CPI-U data supports the fact that for the period 2007-2012, during which the judges received zero raises, state judges' salaries have lagged behind inflation by an approximate total of 13.2% (or an annual average lag of 2.2%).¹³

¹³ This calculation does not include longevity pay and longevity pay increases that eligible judges would have received between 2007 and July 2011, after which time payment amounts were frozen.

Factor 3. Levels of Compensation Received by Judges of Other States and of the Federal Government

Comparing the compensation of Connecticut judges with judges of other states and the federal judiciary is difficult because although the raw numbers for base salary are available, there are variations in the cost of living and in the total benefit packages. Accordingly, a purely mathematical comparison is not possible from available data. The Commission therefore presents the best data available to it.

State Judicial Salaries at a Glance

According to National Center for State Courts (The "Center"), the following is a snapshot of the judicial compensation picture for states across the nation as of January 1, 2012, based on data

| | | | | | Average Annual % Change <i>Pre- Recession</i> | | |
|--|-------------|---------------|------------------------------|----------------|--|----------------|----------------|
| | Mean | Median | Range | | 2003-07 | 2008-09 | 2010-11 |
| Chief, Highest Court | \$157,759 | \$152,500 | \$115,160 to \$228,856 | | 3.19% | 1.58% | 0.67% |
| Associate Justice, Court of Last Resort | \$152,606 | \$146,917 | \$112,530 to \$218,237 | | 3.21% | 1.88% | 0.64% |
| Judge, Intermediate Appellate Courts | \$146,887 | \$140,732 | \$105,050 to \$204,599 | | 3.20% | 1.60% | 0.36% |
| Judge, General-Jurisdiction Trial Courts | \$137,151 | \$132,500 | \$104,170 to \$180,802 | | 3.30% | 1.91% | 0.58% |
| State Court Administrators | \$136,547 | \$130,410 | \$89,960 to \$211,272 | | 3.30% | 1.38% | 0.89% |
| | | | | Average | 3.24% | 1.67% | 0.63% |

through December 2011.¹⁴

In absolute terms, Connecticut's highest court ranks 17th among all states, its intermediate court ranks 11th and its court of general jurisdiction ranks 14th. Moreover, Connecticut in all cases is above both the median and the mean¹⁵ for state judicial salaries.

Recognizing the differences in the cost of living among different states, the Center then applies a cost of living adjustment determined by the Council for Community and Economic Research ("C2ER")¹⁶.

Using a 1.33 cost of living adjustment factor for Connecticut adopted by C2ER, the rank for superior court judges drops to 45th at \$110,271 or well below the adjusted mean and median of \$137,151 and \$132,500 respectively.

New York, using a benchmark of the federal district court salary, brought its trial judges' compensation to \$160,000 in 4/12, \$167,000 in 4/13 and \$174,000 in 4/14. In doing so, the New York Commission's recommendations, which were adopted, noted a steady increase in caseload since the last increase in 1999 but recognized a 2.5 billion state dollar deficit. It did not therefore adopt the recommendation of the Chief Administrative Judge for a range increase from \$192,000 to \$220,000. It is also noted that New York does not provide longevity payments.¹⁷

With the increase given to New York judges, Connecticut moves down a notch to 46th. This is a significant drop from 2006, when Connecticut was ranked 32nd on this adjusted survey.

Alternative Adjustments to State Judicial Benchmarks

If the compensation for superior court judges were to reach the median for state courts on the C2ER adjusted basis, the absolute salary would need to rise from \$146,000 to \$176,225.

On the other hand, in the private sector world, the best practice "is to base local pay scales on local prevailing pay rates or what is generally referred a 'cost of labor' not cost of living."¹⁸ It is

¹⁴ National Center for State Courts Survey of Judicial Salaries, Vol. 37 No. 1 (January 1, 2012).

¹⁵ Note that "median" is the middle of a set of values, with an equal number of data points above and below. The "mean" is the arithmetic average, computed by adding up a collection of numbers and dividing by their count.

¹⁶ According to the Center, C2ER is "the most widely accepted source for cost of living indices, with nearly 400 jurisdictions across America." The cost-of-living indices used in the Center "were developed by examining the average cost of goods and services for the latest four running fiscal quarters. The factors reflect an average of the reporting jurisdictions in a particular state (i.e. the cost-of-living index for Virginia is the average of the cost-of-living indices for each reporting jurisdiction in Virginia." Survey of Judicial Salaries, NCCS Vol. 37. No. 1 page 2

¹⁷ See New York Special Commission on Judicial Compensation, *Final Report*, August 29, 2011 (<http://www.judicialcompensation.ny.gov/assets/FinalReportSpecialCommissionJD.pdf>).

¹⁸ David Van De Voort, at 2/10/2012, Buck Consultants <http://blog.buckconsultants.com/cost-of-living-versus-cost-of-labor/>

generally accepted practice to use the Economic Research Institute for that data. It is the leader in the private sector for area wage differential information. They have over 10,000 annual subscribers and most of the Fortune 500. Using this "cost of labor" data, the average area wage adjustment for Connecticut is 116.64.¹⁹

Using 116.64 as an adjustment factor, Connecticut superior court judges would have to move to \$154,548 in absolute terms to reach the median. This is a key question. It is clear that wages (cost of labor) throughout the US (public and private sector) do not typically line up with the cost of living. For example, according to C2ER, residents in the San Francisco area spend roughly 62% more than the national average on living expenses, while they only earn 20% more. Similar examples are found throughout the US.²⁰ Obviously, wage rates are set locally based on many factors such as labor availability, customer pressures (including tax payers) general economic conditions and living costs. Collectively, these factors drive the overall cost of labor. To establish wages solely on the cost of living risks ignoring these other key factors and setting wages that are not competitive (i.e., too high or too low).

If Connecticut did not adjust and did nothing more than increase judicial salaries based on the average judicial increases across all states since 2003, i.e., 2.3%, superior court judges would now earn \$156,681 in absolute terms which would be slightly above median on a 1.17 adjusted basis, approximately \$20,000 below on a 1.33 adjusted basis, and \$18,000 below a federal district court salary.

Federal Judicial Compensation

Federal district court judges earn \$174,000; circuit judges \$184,000 and associate judges of the Supreme Court \$213,000 as of December 2011.²¹

The Impact of Connecticut's Longevity Pay

The above survey data from NCSC does not include the impact of longevity pay on a comparative basis. As of October 2012, 73% of the superior court judges had reached eligibility for longevity payments ranging from 1.5% to 6% annually.

"Cost of living reflects the cost of goods utilized by a typical consumer while cost of labor reflects what a particular geographic market offers as compensation for a specific type of work." Compensation consultant Ann Bares, a Managing Partner of Altura Consulting Group with 20 years' experience in consulting in the area of compensation. http://compforce.typepad.com/compensation_force/2006/09/cost_of_labor_v.html

¹⁹ ERI Geographic Assessor-2012 ERI Economic Research Institute, Inc.

²⁰ Joe Light, "Adjusting Wage Disparities for Cost of Living," *Wall Street Journal*, May 31, 2011.

²¹ Administrative Office of the U.S. Courts, "Judicial Salaries Since 1968" (<http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/JudgesJudgeships/docs/JudicialSalarieschart.pdf>).

- Judges with 10-14 years of service earned \$148,982 inclusive of a longevity payment of 2,201.70 (1.5% of salary divided between two semi-annual payments);
- judges with 15-19 years of service earned \$151,183 inclusive of longevity payments of \$4,403.40 (3% of salary divided between two semi-annual payments);
- judges with 20-24 years of service earned \$153,385 inclusive of longevity payments of \$6,605.16 (4.5% of salary divided between two semi-annual payments); and
- judges with 25 years of service earned \$155,587 inclusive of longevity payments of \$8,807 (6% of salary divided between two semi-annual payments).

Judges who received a longevity payment on July 1, 2011, will continue to receive that same longevity payment; however, they will not accrue any additional service credit that would increase the payment. In effect, the longevity payment has been frozen. Judges who did not receive a longevity payment on July 1, 2011, are ineligible to receive any longevity payments in the future. According to the best information received to date, only four other states have reported that their judiciary may receive longevity pay.

In summary, judges have no opportunity to receive any increases in the future either by way of salary increases or increasing longevity credits unless the legislature adopts a compensation structure for the future to insure that the judiciary maintains its required stature and is not disproportionately impacted viz a viz the other two branches of government.

Other Elements of Compensation

Pensions

Connecticut judges appointed after January 1, 1981 are eligible for a pension equal to 66 2/3% of final salary, plus 1.5 to 6% depending on their years of service when they retire. They are required to contribute 5% of their salary annually and serve 10 years to vest in the system. They are eligible to receive a full pension:

- For judges retiring prior to July 1, 2022: after serving 20 years as a judge (CGS § 51-50a).
- For judges retiring on or after July 1, 2022: after serving 25 years and attaining age 63 (PA 11-61 §139, as amended by §§ 132-140 of PA 12-1, June Special Session).
- After serving 30 years as a state employee or judge, provided at least 10 years was served as a judge (CGS § 51-50a).
- Upon reaching age 65 (full pension if 10 years of service; partial pension if less than 10years) (CGS § 51-50a).
- Upon reaching age 70 (full pension regardless of years of service) (CGS § 51-50).

Pursuant to PA 12-1, June Special Session, judges appointed prior to July 1, 2011, who otherwise would not reach normal eligibility for a full retirement (20 years as a judge) by July 1, 2022 may make a one-time irrevocable election to pay the actuarial cost of maintaining the current eligibility requirement of 20 years of service as a judge at any age (PA 12-1 § 139).

They are also eligible for cost of living adjustments.

Without detailed actuarial studies of the 50 states' plans, it is impossible to do a precise comparison of pension values.

However based on a 2010 survey by the NCSC,²² it appears that the vast majority of states have comparable pensions available to their judges with approximately 75% of the 42 that completed the survey reporting an equal or higher maximum of salary available upon retirement than Connecticut. A substantial number require a higher contributory percent by the individual judge in the range of 6 to 8% (with a few higher and few lower) and approximately 20 states reporting into the survey describe pension formulas based on percentages per years of service as opposed to a defined percentage of final pay.

In summary, based on this raw data only and without precise analysis, one might very preliminarily conclude that some aspects of Connecticut pension system for judges are generally more generous than other states but not out of line.

It should also be noted that judges pay more toward their pensions than most other state employees and their pension plan is more solvent than the State Employees' Retirement System.²³ It is also assumed this benefit remains an important element in attracting candidates who have the opportunity to earn far more in salary in Connecticut (see Factor 4 regarding comparison to other attorneys in Connecticut both the private and public sectors).

Federal judges are appointed for life and beginning at age 65, are eligible to receive full pay after 15 years of service with cost of living adjustments.

Retiree Medical Benefits

Given our limited time frame, the commission was unable to obtain comparative data on retiree medical benefits from other states. Within Connecticut there were several changes made to retiree health coverage eligibility and funding in the 2011 SEBAC agreement that equally affects the judiciary. It is specifically noted that all judges will have to contribute a portion of their salary (starting at 0.5% in July 2013 and reaching 3% in July 2015) for 10 years (or until their retirement, whichever is sooner) to a retiree healthcare trust fund to help fund the cost of providing retiree health insurance. Under the 2009 SEBAC agreement, all state employees,

²² NCSC "State Survey of Retirement Programs for Intermediate Appellate Court and General Jurisdiction Trial Court Judges", May 2010

²³ Presentation of the Office of Fiscal Analysis, 11/20/12.

including judges, who did not have 5 years of service credit as of July 1, 2010, have already been paying 3% per year until they reach 10 years of service.²⁴

Whereas most other state employees will receive pay increases when these contributions begin, the newer judges lost longevity pay and all judges could potentially contribute 3% of their salary for ten years without any present or future pay increases.

Health Benefits

All 50 states provide health care benefits to their employees. The amount of coverage and the portions paid by the state and the employee vary. According to a 2011 survey conducted by the National Conference of State Legislatures (NCSL), on average a standard individual plan cost \$519.13 with the state paying an average of \$460.63 or 89 percent. The average cost for the lowest cost individual policy was \$423.32 with the state paying an average of \$402.56 or 95 percent. Ten states pay 100 percent of the premiums for the low cost plan and five states pay 100 percent of the premiums for the standard plan. This data is based on 24 states.²⁵ In comparison, the average monthly premium for Connecticut's lowest cost medical plan is \$328.37 with the state's share at \$290.60 or 88 percent and the monthly premium for the highest cost medical plan is \$771.09 of which the state pays \$599.09 or 78 percent.²⁶

Although these are isolated data points, they do suggest that Connecticut's state employee health benefits are not out of line with other states. However, to obtain a true detailed and precise comparative study among the states would have cost several thousand dollars.

Other Considerations

Expertise Required. Connecticut ranks 29th in population and 4th in density out of 50 states and encompasses metropolitan, urban and rural areas. It is a single tier unified court system that, according to the Judicial Branch and various presenters, requires a higher level of generalized expertise from Connecticut judges when compared to states in which judges serve in only one specialized court.

Raises in Other States. Most states do not provide salary increases to judges every year. In addition, only 9 states increased salaries in 2010 and 2011 for general jurisdiction trial courts. The average judicial increase since 2003 was 2.3%.²⁷

²⁴ OLR Report 2012-R-0032.

²⁵ NCSL, "2011 State Employee Health Benefits," (<http://www.ncsl.org/Portals/1/documents/health/StateEHBenefits2011.pdf>).

²⁶ State of Connecticut- Office of the State Comptroller, Healthcare Policy & Benefit Services Division, "2011-2012 Biweekly Medical Insurance Rates," (Fact sheet from Connecticut State Comptroller submitted to NCSL) (<http://www.osc.ct.gov/empret/healthin/2011hcplan/ActiveBiWeeklyMed-RxRates2011-2012.pdf>).

²⁷ National Center for State Courts, Vol. 37 No. 1.

Workload. Since the last salary increase in 2007, the number of judges has dropped by approximately 9% and judge support staff by 19% while the number of cases per judge has increased by 2.1%. In addition, self-represented parties in civil and family matters have increased 26% in the same time frame, which significantly affects the real workload for the individual judge.²⁸

In the past two years, five long-term judges have left to return to private practice, though based on the presentations before the Commission, the causal link with salary is unclear. According to the Chief Justice, all of the departing judges were eligible to receive pensions.

²⁸ Farley, Melissa, E-mail to Timothy Fisher re: Answer to Question #13 and Supplement to Question #11, November 19, 2012. It should be noted that, over the past several years, the Judicial Branch has diverted its scarce resources to enhance technology. The result has been positive in that efficiencies have been created. As a result, the Judicial Branch is currently engaged in a comprehensive analysis to identify how best to use and divert staff resources as part of its re-engineering of the court system project. The Judicial Branch states that it will further consult with the National Center for State Courts to enhance best practices and to ensure efficiencies in all areas of the Judicial Branch.

Factor 4. Levels of Compensation Received by Attorneys Employed by Government Agencies, Academic Institutions, and Private and Nonprofit Organizations

This section of our report considers whether judges are paid appropriately in comparison to lawyers who have not become judges. We first consider those lawyers who are employed by the state, and thus have comparable pension and health benefits to judges. We then consider the compensation of lawyers employed elsewhere to evaluate the degree to which Connecticut's judges are paid at a level commensurate with the skills and responsibilities of their positions.

Lawyers Employed By The State

Many lawyers at senior levels of state service are paid more or close to the salaries of Superior Court judges. There are also a number of lawyers employed by the State who make more than Superior Court Judges. These lawyers include the state's Chief State's Attorney and Chief Public Defender (both currently at \$152,650), and legislative caucus chief counsels (between \$144,000 and \$174,438) and senior employees of the Judicial Branch.²⁹ They also include certain Commissioners of Executive Branch departments.

There are many lawyers employed by the State whose salaries are below but close to those of judges, including all of the State's Attorneys and Public Defenders for each Judicial District (who are currently paid up to \$143,516), senior members of the Office of the Attorney General, and in some cases other personnel in the Judicial Branch itself.

As a result, judges' compensation has been approached or even exceeded by that of other lawyers, while traditionally judges would have been paid substantially more. Had the judges received the same pay raises as Executive Branch managers since FY 2004, judges' salary would now be \$175,643.³⁰

There is no principled basis for this reversal. There has been no change in relative responsibilities of judges compared to these other lawyers in state service. Rather, the reversal appears to be an accident and byproduct of the differential in the decision-making process.

Lawyers In Academic Institutions

Tenured law professors average \$153,000 in the northeast, and average \$176,997 at the UConn Law School.³¹

²⁹ Information on the salaries of senior Judicial Branch employee drawn from the written submission of Susan Knip, President, Federation of CT Taxpayer Organizations, 11/30/12.

³⁰ Judicial Branch, Judicial Compensation Commission Answers Provided by the Judicial Branch to Questions Regarding Judicial Branch Report and Related Data, October 22, 2012, p. 4.

³¹ Society of American Law Teachers, "2011-12 SALT Salary Survey," SALT Equalizer Vol. 2012, Issue 1, May 2012 (<http://www.saltlaw.org/userfiles/SALT%20salary%20survey%202012.pdf>).

Lawyers in the Private Sector

The compensation levels of lawyers in private practice is relevant because the State must consider the compensation that would be surrendered by a qualified lawyer leaving private practice to join the bench. To the extent that a differential grows between compensation levels in private practice and judgeships, skilled lawyers will be discouraged from becoming judges. (See Factor 5, The State's Interest in Attracting Highly Qualified and Experienced Attorneys to Serve in Judicial Capacities.)

Large Firms

We have identified several trends regarding the compensation of lawyers in private practice in Connecticut. The legal profession is segmenting, with partners in top firms making more than ever, while many other lawyers are under financial pressure to find law practice business models that give income at past levels. Unlike judicial salaries that are set by statute, law firm salaries have to be obtained by surveys and from other sources. We have been able to assemble the following information:

- Connecticut Associates. Among medium and large sized firms in Connecticut, there is published data on compensation for new associates. Those range from \$90,000 to \$125,000, and associates frequently get raises of up to \$60,000 over their six to eight years in that job.
- Connecticut Partners. There is also some level of reported data on Connecticut partner salaries. Junior partners are paid in the range of \$160,000 to \$240,000, and more senior partners from \$250,000 to \$1,000,000.
- Northeast (non- New York City) partners. We have also been provided the results of surveys of partner compensation in larger firms in the Northeast. According to a bank survey of its large law firm clients (including firms of 200-400 lawyers headquartered in the Northeast but not in New York City) equity partners at the tenth percentile averaged annual compensation of \$300,000. (In other words, only ten percent of the equity partners in those firms made under \$300,000, while ninety percent made more than \$300,000.)

Mid-Sized Firms and In House

We also looked at the compensation of lawyers outside of large firms. We consulted with a legal recruiter regarding the compensation typically paid to partners at mid-sized firms (30-50 lawyers) and in-house counsel positions. Experienced and reputable lawyers at such firms tend to make \$150,000 at a minimum, and usually closer to \$200,000. In-house positions for lawyers of such experience rarely pay below \$180,000, and most are in the \$200,000 to \$250,000 range, plus bonus and equity or options.

Pensions

It is often pointed out that the pension benefits of judges exceed those found in the private sector. We sought to analyze the degree of that differential, to determine what portion of the compensation gap between private practice lawyers and judges can be considered an implicit trade-off for higher pension benefits. Toward that end, we have been provided pro bono assistance by the accounting firm of Cohn Reznick. Their report is in our Appendix.

That report makes several key conclusions: If a lawyer aged 46 were to remain in private practice at the same salary as our Superior Court judges, in order to set aside retirement funds to equal the present value of a judicial pension at retirement age that lawyer would have to set aside approximately 23% of his or her pre-tax earnings into a retirement plan each year, or approximately \$30,000 per year rising to \$43,000 by age 64 to match the value of a judicial pension at age 65. Conversely, that lawyer would be able to equal the retirement benefits of judges if he or she had a salary that was \$30,000 higher than the judges at age 46, and set aside the difference toward retirement. That lawyer would then have equivalent retirement benefits to those of judges. Therefore, any compensation to private practice lawyers in excess of \$176,780 more than makes up for the pension benefits of judges.

Relevance of these Comparisons

These comparisons are relevant because the state, including the business community in particular, sees a need for diversity of background and experience on the bench.³² If we are to attract persons to the bench who are experienced and skilled at handling important corporate and commercial matters, we need to make the job at least somewhat attractive to individuals we might call upon to leave private employment for the bench.

While judges with background in state service bring valuable knowledge and experience to the bench, the state needs a mix of skills and experience among its judges. It would weaken our judiciary to become imbalanced in any direction.

³² Testimony of John Rathgeber, President, Connecticut Business and Industry Association, 11/20/12.

Factor 5. The State's Interest in Attracting Highly Qualified and Experienced Attorneys to Serve in Judicial Capacities

The Commission takes it as a given that the State has an interest in attracting highly qualified and experienced attorneys to serve in judicial capacities. The issue is whether that goal is adversely affected by the current compensation.

Because of the unique process by which lawyers become judges in Connecticut, a traditional labor market analysis cannot be performed. Candidates for the judiciary are self-selecting. They must complete a lengthy questionnaire and submit a formal application to the Judicial Selection Commission. That commission decides whether the candidate is qualified. If qualified, the candidate is placed on a list. The governor must appoint judges from that list.

Pursuant to Section 51-44a of the CT General Statutes, the investigations, deliberations, files and records of the Commission are confidential. Accordingly, this Commission was not able to get statistical information about the applicants, nor about the applicants who were approved by the commission, nor about the individuals who are on the list of approved candidates. The only hard data is about the individuals who actually become judges. That is the "output." There is no available statistical information about the "input." In other words, there is no information available about the applicant pool, whether the characteristics of the pool have changed over time and, if so, why.

Accordingly, the following information was obtained primarily from testimony, not underlying data.

There are currently 220 lawyers whose applications have been approved by the Judicial Selection Commission as candidates for judicial office.³³

As of December 31, 2011, the Judicial Selection Commission's list of approved candidates reflects a diverse group of qualified lawyers.³⁴

Of the current list of 220 approved lawyer candidates of the Judicial Selection Commission, no candidate has withdrawn or asked that his/her name be removed as a candidate for judicial office.³⁵

Of the current list of 220 approved lawyer candidates, the annual income for each ranges from "modest" to "million dollar lawyers."³⁶

³³ Testimony of Robert Bello and Karen Netherton of Judicial Selection Commission, November 20, 2012.

³⁴ Testimony of Robert Bello and Karen Netherton of Judicial Selection Commission, November 20, 2012.

³⁵ Testimony of Robert Bello and Karen Netherton of Judicial Selection Commission, November 20, 2012.

³⁶ Testimony of Robert Bello and Karen Netherton of Judicial Selection Commission, November 20, 2012.

The Judicial Selection Commission interprets its statistics to reveal no shortage of qualified applicants for judicial office.³⁷

The consensus view of the Connecticut Bar Association is that its members consider the retirement and medical benefit plan of Superior Court Judges to be better than what is available to private sector lawyers.³⁸

Inadequate salary was identified as a chief deterrent to minority lawyers' application for judicial office.³⁹

During the decade of the 1990's there were 115 new judges of whom 26 were from the public sector and 89 or 77% were from the private sector. During the decade of the 2000's, there were 98 new judges of whom 38 were from the public sector and 60 or 61% were from the private sector: a drop of 16%. Between 2007 and 2012, 44 new Judges were appointed; 29 or 66% of these new Judges came from the private sector.⁴⁰

³⁷ Testimony of Robert Bello and Karen Netherton of Judicial Selection Commission, November 20, 2012.

³⁸ Testimony of Barry Hawkins, President of the Connecticut Bar Association, November 20, 2012.

³⁹ Letter & testimony about survey conducted by the Affinity Bar Associations (CAPABA, CHBA, Crawford, and SABAC), November 20, 2012.

⁴⁰ *Judicial Compensation Commission Answers Provided by the Judicial Branch to Questions Regarding Judicial Branch Report and Related Data*, October 22, 2012, (answer to Question 27).

Factor 6. Compensation Adjustments Applicable to Employees of the State During Applicable Fiscal Years

Analyzing this factor necessarily requires some analysis of the historical compensation paid to judicial officers in comparison to that paid to other state employees.

With few exceptions, judges currently earn a base salary of \$146,780 per year.

Historical – Judges Compared to State Employees

Judges received raises in 3 of the 11 years from FY 2003 through FY 2012. The last time the legislature approved a raise was in 2004. Judges have not received any increase in their salaries for the last six years, since January 1, 2007.⁴¹

Since 2003, the state's unionized employees received annual increases in all but the last two years and the state's non-union employees received annual increases in all but the last four⁴².

Judges' increases over the last ten years have averaged of 1.65 % annually. By contrast the average state employee yearly increase was 3.52 %.⁴³

More specifically, on average and on an annualized basis, the salary increases over the last 10 years has been:

- 3.4% for unionized employees
- 3.5% for executive branch managers, and
- 3.9% for legislative employees.⁴⁴

⁴¹ Connecticut judges have not had a raise since January 1, 2007. Section 12 of PA 04-2, May Special Session, increased salaries for judges 5.5% at the beginning of each of the 2005, 2006, and 2007 calendar years. This increased a Superior Court Judge's salary from \$125,000 to \$131,875 in 2005, \$139,128 in 2006, and \$146,780 in 2007, where it remains (CGS § 51-47). Section 10 of the act gave similar 5.5% increases to Family Support Magistrates (CGS § 46b-231). Sections 11 and 15 of the act gave a one-time 5.5% increase to the per diem rates of Family Support Referees (from \$180 to \$190; CGS § 46b-236) and Judge Trial Referees (from \$200 to \$211; CGS § 52-434).

⁴² *Judicial Compensation Commission Answers Provided by the Judicial Branch to Questions Regarding Judicial Branch Report and Related Data*, October 22, 2012, p. 2.

⁴³ Chief Justice Chase T. Rogers, *Submission to the Connecticut Commission on Judicial Compensation*, October 3, 2012, at page 15.

⁴⁴ *Judicial Compensation Commission Answers Provided by the Judicial Branch to Questions Regarding Judicial Branch Report and Related Data*, October 22, 2012, pp. 4-5.

The percentage impact on the judges' salaries has had a real impact in comparative "real" dollars. If, over the past 10 years, judges had received these same percentage increases as the three categories of employees just noted, their current salary levels, would be respectively:

- \$174,441 (at union increase rates)
- \$175,643 (at managerial increase rates), and
- \$182,390 (at legislative employee rates).⁴⁵

State commissioners earn between \$124,836 and \$218,000, deputy commissioners earn between \$106,478 and \$184,245, the Governor's Chief Legal Counsel earns between \$108,478 and \$184,245 and the Caucus Chief Legal Counsels earn between \$144,000 and \$172,248. The top legal positions in state government have all experienced larger salary increases than the judges over the last 10 years, 19-22% as compared to 16.5% for the judges. It should also be noted that many started with comparable or higher base salaries.

Prospective – Judges Compared to State Employees

Under the SEBAC 2011 agreement, the agreements reached by individual bargaining units and Public Act 11-1, almost all state union and non-union employees will experience a wage freeze for FY 2012 and 2013, followed by three years of 3 % COLA increases thereafter for unionized employees and, if past practice holds, non-union employees.⁴⁶ Both sets of employees will be eligible for merit increases as well, estimated at between 1.1% and 2.9%.⁴⁷

The Judges salaries have been effectively frozen for FY 2012 and FY 2013, but also for all but three years since FY2002. If the prospective 3% COLA raises for other employees were applied to judges -- without regard to the lack of raises in the past, then their salaries would be increased to \$151,183 FY 2014, \$155,718 for FY 2005 year, and \$160,390 for FY 2016.

In comparing other aspects of state employees' and judges' total compensation packages, the Commission notes that (1) judges contribute more to their retirement system than SERS participants, but also generally receive a larger pension benefit;⁴⁸ (2) all state employees,

⁴⁵ *Judicial Compensation Commission Answers Provided by the Judicial Branch to Questions Regarding Judicial Branch Report and Related Data*, October 22, 2012, pp. 4-5.

⁴⁶ OLR Report 2012-R-0032 provides details on the SEBAC 2011 agreement.

⁴⁷ In their budget projections, OFA estimates assume total annual increases as 4.1% for union employees and 5.9% for non-union employees, with a 4.5% weighted average for all employees. OFA presentation, November 20, 2012.

⁴⁸ Regular state employees contribute 2% of their pension system (SERS), while judges contribute 5% to their system. SERS pension benefits are determined with a formula that increases the payment based on the employee's years of service, while judges' pensions are 2/3 of the judges final average salary. So, for example, a Tier II employee in SERS would need 40.7 years of state service to receive the same annual benefit as a judge.

including judges, are under the same active and retiree health insurance system;⁴⁹ and (3) recent changes in longevity payments were slightly more generous for unionized employees than for non-union employees and judges.⁵⁰

Based on all of the above, we conclude that judges' salaries have not kept pace with other state employees either in relative or actual dollars.

⁴⁹ As noted under Factor 3, all state employees will eventually be required to contribute 3% of their salary for ten years towards retiree health care, but judges, unlike most other State employees, are not guaranteed raises to counterbalance these deductions.

⁵⁰ For unionized employees (under SEBAC 2011), longevity ends for any new hires, but for non-union employees and judges (under PA 11-1, June Special Session), longevity ends for anyone who did not have 10 years of service. Also, union employees have a two-year longevity freeze, after which payments and service accumulation resume. Longevity eligible non-union employees and judges have a potentially permanent freeze.

VI. CONCLUSIONS

A Superior Court judge's salary is \$146,780. It has not changed in six years, since January 1, 2007. In fact, the pay for some newer judges effectively *declined* due to a 2009 requirement to pay 3% of their salary for 10 years to fund retirement healthcare benefits. Starting July 1, 2013, this requirement will expand to include all state employees and in 2015 could effectively result in a 3% salary reduction for all judges.

The Commission concludes that Judicial Salaries should be raised.

Undoubtedly some readers will look at the state budget and the economy (Factors 1 and 7) and conclude that based on those factors alone, there should be no raises. Conversely, if a reader were to look only at the compensation of partners in large private firms (a part of Factor 6), one might conclude that judicial salaries should increase by \$100,000 or more.

Neither approach is appropriate. The statute charged the commission to look at all of the seven factors, not just one or two.

In the discussion of individual factors above, we laid out the data we have. In this section, we describe the way the Commission synthesized the factors to come up with the recommendations.

The State's Economic Climate and Ability to Afford Raises – Factors 1 & 7

The state of Connecticut continues to suffer from slow growth and delayed recovery from the recession, and most authorities do not predict real recovery until FY 16. For this reason we have not recommended an attempt to restore the judges to the position that they would be in today had they received raises commensurate with other state employees. At the same time, however, the judges' compensation is an extremely small portion of the general fund. And perhaps even more to the point, the total portion of the state's general fund that is allocated to judges' compensation has significantly *decreased* over the last ten years, from 0.21% to 0.17%. In this sense, the state can arguably afford a raise for the judges now more easily than it could have ten years ago. At the same time, the commission recognizes that, for FY 14 in particular, the Legislature must find ways to reduce spending, and therefore increasing *any* expenditure is difficult. We have sought to provide the best explanation possible of our recommendations, therefore, given the factors that the Legislature directed that we consider.

The Effect of Inflation – Factor 2

Judges' salaries have lagged substantially behind inflation. As a result, Connecticut's judges make much less on a standard of living basis than they did ten years ago. The overwhelming majority of the persons and organizations that provided input to our commission agreed that this should be corrected, both for the present and going forward. Our recommendation can be seen as a way to recapture the judge's eroded buying power, but given the state's economic and fiscal condition, on a gradual basis to phase in its impact on the state's budget.

Federal judges and judges of others states – Factor 3

Factor 3 requires consideration of compensation for federal judges and judges of others states. The Commission's recommendation is consistent with that data. Federal trial judges are at \$174,000 and maintain that salary for life. New York State Judges will reach the same level in April 2014.

In looking at Connecticut judges in comparison to other states, the data shows that the relative pay on an adjusted basis of Connecticut's judges has fallen. In 2006, Connecticut judges ranked 32nd. Based on the most recent data, Connecticut has fallen to 46th. Also, other states' judicial pensions are generally comparable to those in Connecticut. Therefore we consider the comparison to other states' judges to be a highly relevant factor. While not elevating pay for the states' judges to the uppermost ranks in the nation, where some believe they rightfully belong, the recommended increase in FY 14 will move Connecticut from the bottom to the middle of the states.

Other Lawyers – Narrowing the Gap – Factor 4

Connecticut's judges have lost ground compared to other senior lawyers in service to the state. There is no principled reason for this; it is the consequence of the exclusion of judges from the pay increases of recent years for other state employees. But as a result, the traditional gap between judges and other senior lawyers has been largely closed, and in some instances there are state employee lawyers who now make more than judges when they traditionally made less.

Public servants, including judges, will never match private sector compensation. Even with the increases proposed by the Commissions, judges will still be substantially below private firms. However, by the fourth year of the proposed increase, the judges will be at rough parity with associates at Connecticut's major firms who have been out of law school for 8 years.

Mathematical parity between judges and partners at large firms is not attainable and may not be desirable. Nevertheless, there is a point at which the gaps between the compensation of judges and other lawyers of comparable skill and experience undermine the court's stature and create a serious morale issue.

The gaps, however, create a deeper problem than just morale. Americans assign significant meaning to compensation. For better or worse, we expect higher levels of pay in return for greater skill and responsibility, and believe that compensation reflects the value an employer places on us. In the case of judges, that employer is the State of Connecticut. The State unavoidably sends the public a message about the value of judges by the level of compensation it pays them.

Attracting Applicants – Factor 5

Factor 5 is inconclusive. The Judicial Selection Commission receives a sufficient number of applicants and there are more than 200 qualified applicants on the list. However, because of data

limitations, there is no way to determine the characteristics of the applicants, whether the quality has changed over time or whether – if there has been a change -- the compensation of judges was a factor.

Equity With Other State Employees – Factor 6

Given the need to preserve the Judiciary as an equal branch of government, this factor must be given substantial weight. During the last decade, there has been an increasing discrepancy between judges and other state workers. There is no reason to believe that a judge's value has diminished compared to other state workers, but the judges' compensation has diminished significantly.

The discrepancies are not trivial. As noted above,

- Over the past 10 years, the judges' increases averaged only 1.65% compared to other state employees averaging 3.52%, or more than *twice* as much.
- Judges are currently scheduled to have *zero* raises in the future while most other state employees are guaranteed COLA and other adjustments estimated at 4.1% in each of the next three years⁵¹.
- Without the offsetting salary increases that have been promised to other state employees, Judges' take home pay could actually *decrease* once they are required to contribute up to 3% for their retiree healthcare benefits.

Phased In Partial Adjustments Is A Fair Approach

The Chief Justice's report, on page 19, proposes increasing judges' salaries 11.3% for the next fiscal year and 5.5% for the subsequent three fiscal years. The 11.3% increase is intended to compensate for the lack of past raises and the prospective increases are intended to match the increases promised to other state employees.

This option would immediately adjust judges' salaries for slightly more than the rate of inflation from 2007 through 2011, and it would keep salaries approximately 3% above the projected CPI-U for each of the remaining three fiscal years.

Although this proposal has a certain logic, a package of increases totaling 27.8% over four years conflicts with two other factors the Commission is considering: Factor 1, the state's troubled economic climate and Factor 7, the state's ability to fund salary increases.

⁵¹ This figure is the Office of Fiscal Analysis's estimation of the total increases for unionized employees under SEBAC 2011. OFA's weighted average increases for all state employees, including non-union employees (whose increases are not guaranteed) over the next three fiscal years is 4.5%. OFA Presentation to the Commission, November 20, 2012.

With these two factors in mind, a more viable approach is to adjust judges' salaries by 5.3% per year over the course of the next four fiscal years, as follows.

| Recommended Superior Court Judges' Salary | | |
|--|--|------------------------------------|
| Fiscal Year | Chief Justice's Proposal⁵² | Commission's Recommendation |
| 2014 (July 1, 2013 to June 30, 2014) | \$163,416 | \$154,559 |
| 2015 (July 1, 2014 to June 30, 2015) | \$172,404 | \$162,751 |
| 2016 (July 1, 2015 to June 30, 2016) | \$181,886 | \$171,377 |
| 2017 (July 1, 2016 to June 30, 2017) | \$191,890 | \$180,460 |

The Commission's Recommendation is Reasonable.

The Commission believes the recommendation is reasonable for multiple reasons, including the following.

- The judges began falling behind in 2002. For every year since that time, their salaries were less than they would have been if they had received the same raises as other state employees. Nothing in this proposal will make them whole for a decade of disparities. Those dollars are gone forever. If the Commission were to cure the historical difference in raises between judges and other state employees, the proposed increases would have been higher.
- Over the next three fiscal years state employees are scheduled to receive annual increases estimated to total between 4.1% and 5.9%. While not curing past discrepancies, the Commission's proposed 5.3% increases will allow the judges to keep pace with their fellow state employees.
- The recommendation also addresses the historical and prospective difference between inflation and the judges' last raise. The inflation loss since 2007 has been calculated to be 13.2%. To overcome that cumulative disparity would require an immediate one-time adjustment of 13.2% in the first year. Rather than embrace this approach, the Commission's proposal reflects a 3.3% adjustment phased in over four years that also anticipates the 2% inflation projected for the future, and is 6.6% less than the Chief Justice's proposal.

⁵² Chief Justice's Report, page 20

- By proposing a \$154,559 salary for FY 14, the recommendation elevates judges' salaries from the bottom rungs of national standards to a more respectable national median, adjusted for interstate differences in the cost of labor. At the same time, it helps protect against future inflation, the freezing of longevity pay, and an effective 3% pay reduction created by required retiree healthcare contributions which some are already paying and all will pay by 2015.
- While it is well understood that careers in public service demand personal and a financial sacrifice, and that those candidates seeking appointment to Judicial Office must be prepared to forego the opportunity of lucrative compensation in the private sector, judicial compensation should at least be comparable to the remuneration received by lawyers in similar career paths in the private sector and by other public servants having comparable responsibilities, training, and experience.
- Finally, unlike a collective bargaining agreement, this recommendation, even if enacted during the 2013 session, can be changed in the future. Upon enactment, the judges will receive a legislative promise, but not a guaranty.

VII. RECOMMENDATIONS

The Commission recommends that the Legislature make no change in Judicial salaries for the current year, Fiscal Year 2013 (2012-13), even though the current Judicial salaries clearly warrant adjustment.

The Commission recommends that the Legislature, during the 2013 Session, fix the salaries for Superior Court Judges for each of the four following Fiscal Years at the amounts set forth below.

| Fiscal Year | Recommended Superior Court Judges' Salary |
|---|--|
| 2014 (July 1, 2013 to June 30, 2014) | \$154,559 |
| 2015 (July 1, 2014 to June 30, 2015) | \$162,751 |
| 2016 (July 1, 2015 to June 30, 2016) | \$171,377 |
| 2017 (July 1, 2016 to June 30, 2017) | \$180,460 |

The Commission further recommends that the salaries and per diem rates of all Judicial Officers under its charge be increased by the same 5.3%. (To do otherwise would require evaluating the relative merits of different judicial officers and that is beyond the Commission's role.) The following table shows the full proposed set of salary recommendation. (These may be compared to the full page of proposed adjustments on p. 20 of the Chief Justice's Report, in the appendix.)

Recommended Judicial Salary Changes

| Position | Current Compensation | FY 14 | FY 15 | FY 16 | FY 17 |
|---|--|-----------|-----------|-----------|-----------|
| Family Support Magistrate | \$121,615 | \$128,061 | \$134,848 | \$141,995 | \$149,520 |
| Chief Family Support Magistrate | \$127,782 | \$134,554 | \$141,686 | \$149,195 | \$157,103 |
| Superior Court Judge | \$146,780 | \$154,559 | \$162,751 | \$171,377 | \$180,460 |
| Deputy Chief Court Administrator | \$149,853 | \$157,795 | \$166,158 | \$174,965 | \$184,238 |
| Appellate Court Judge | \$152,637 | \$160,727 | \$169,245 | \$178,215 | \$187,661 |
| Appellate Court Chief Judge | \$160,722 | \$169,240 | \$178,210 | \$187,655 | \$197,601 |
| Supreme Court Associate Justice | \$162,520 | \$171,134 | \$180,204 | \$189,754 | \$199,811 |
| Chief Court Administrator (if a judge or justice) | \$168,783 | \$177,728 | \$187,148 | \$197,067 | \$207,512 |
| Supreme Court Chief Justice | \$175,645 | \$184,954 | \$194,757 | \$205,079 | \$215,948 |
| Chief Administrative Judge and Administrative Judge | \$1,000 in addition to judicial salary | \$1,053 | \$1,109 | \$1,168 | \$1,229 |
| Family Support Referee | \$190 per day | \$200 | \$211 | \$222 | \$234 |
| Senior Judge or Judge Trial Referee | \$220 per day | \$232 | \$244 | \$257 | \$270 |

VIII. CLOSING

The Commissioners are grateful to have had the opportunity to contribute to this important project. We hope that the Executive, Legislative and Judicial Branches find the information and analysis helpful.

The Commissioners are deeply indebted to Chairman Tim Fisher for guiding us through a complex process that we were required to complete in a very brief period of time. The Commissioners also want to express our thanks to the staff offices of the Legislature and particularly to Lee Hansen from the Office of Legislative Research, who staffed the Commission.

Although not every Commissioner necessarily agrees with each and every statement in the Report, and some felt that the recommended salary increases should be either higher or lower, the undersigned Commissioners unanimously endorse the Report and the recommendations as evidenced by our signatures below.

Each Commissioner is identified by his or her professional affiliation and the appointing authority. Following the Chair, they are listed alphabetically.

[Signatures begin on the following page]

2012 COMMISSION ON JUDICIAL COMPENSATION



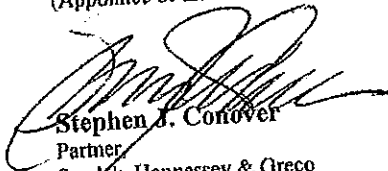
Timothy Fisher, Chair
Partner,
McCarter & English
(Appointee of the Governor)



Hon. John P. Chiota
Trumbull Judge of Probate
(Appointee of the Senate Minority Leader)



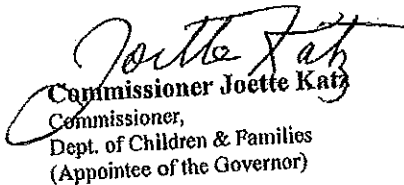
Hon. Blagoo "Billy" Ciotto
Former State Senator
(Appointee of the Senate President Pro Tempore)



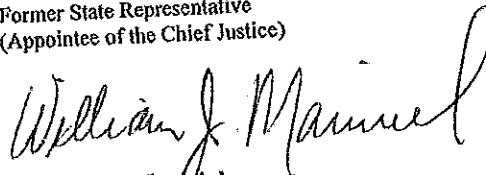
Stephen J. Conover
Partner,
Sandak, Hennessey & Greco
(Appointee of the House Minority Leader)



Hon. William Dyson
Former State Representative
(Appointee of the Chief Justice)



Commissioner Joette Katz
Commissioner,
Dept. of Children & Families
(Appointee of the Governor)



William J. Manziel
Corporate Director Labor & Employee Relations,
UHL Holdings Corp.
(Appointee of the Senate Majority Leader)



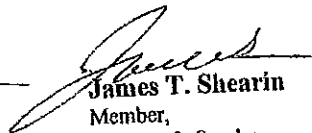
Joseph J. McGee
Vice President, Public Policy and Programs,
The Business Council of Fairfield County
(Appointee of the Chief Justice)



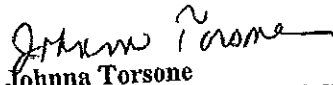
Richard Orr
General Counsel,
University of Connecticut
(Appointee of the House Majority Leader)



Michael D. Quinn
Partner,
Mahon, Quinn & Mahon, P.C.
Corporation Counsel, City of Meriden
(Appointee of the House Speaker)



James T. Shearin
Member,
Pullman & Comley
(Appointee of the Governor)



Johnna Torsone
Executive Vice President and Chief Human Resources
Officer,
Pitney Bowes
(Appointee of the Governor)

APPENDIX

The sources referred to in this report have been assembled. Because of their volume, they are not attached. Instead they have been compiled in an Appendix that contains either copies of the materials or links to them.

Below is a list of the source materials compiled in the Appendix.

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