A CALL FOR CONTINUED EXCELLENCE:

Fair Compensation for Our Judges and Judicial Employees

The Report of the Boston Bar Association Committee on Judicial System Compensation

November 23, 1992
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INTRODUCTION

In August, 1992, the Boston Bar Association appointed this Committee to investigate and report on the status of compensation levels for judges and other employees in the Massachusetts state court system. The impetus behind the Committee's formation was threefold. First, increasing attention has been focused on the issue of court reform. An analysis of the compensation levels of those who work in the judicial system and the impact those compensation levels have on the operation of the courts is a necessary component of any overall evaluation of the system. Second, several years have passed without any adjustments to the salaries of those in the judicial system, not even cost of living increases. An evaluation of the judicial system's compensation structure is thus long overdue. Third, a number of judicial vacancies are projected to occur within the immediate future, rendering it important to investigate whether the existing compensation scheme is adequate to recruit and retain the most qualified candidates for these positions.

The Committee's mandate from the Boston Bar Association was straightforward: to investigate the existing compensation scheme and to make recommendations, if appropriate, concerning any perceived inadequacies and measures to correct such inadequacies. In seeking to fulfill this mandate, the Committee has collected and analyzed pertinent salary, caseload and employment-related data concerning Massachusetts judges as well as judges from neighboring and comparable states. The Committee has examined
the compensation levels of judicial staff and employees as well. Finally, Committee members have also interviewed a large number of present and former judges.

SUMMARY OF CONCLUSIONS

The Committee has reached the following principal conclusions:

1. By almost every relevant statistical measure, compensation levels for those who work in the judicial system are inadequate.

   In the last four years, neither judges nor other employees have received a pay adjustment of any kind. The absence of even cost of living increases has caused Massachusetts judges and judicial employees effectively to experience, in inflation-adjusted dollars, a pay cut of over 18%. Other data confirm the inadequacy of the existing pay scale. The salaries of Massachusetts judges, on the whole, are lower than the salaries of their counterparts in comparable states. Massachusetts judicial salaries also have not kept pace with adjustments in federal salaries; in fact, the disparities have widened dramatically.

2. Notwithstanding the effective decrease in salaries, the responsibilities of virtually all judges and other court personnel in Massachusetts have continued to increase significantly.

   A comparison of statistics between 1988 and 1991 reveals an increase in the number of cases filed throughout virtually all levels of the court system. Not only are workloads higher, but the number of personnel to handle the work has decreased.
3. The inadequacies in compensation levels are having an increasingly harmful impact throughout the system.

Massachusetts' ability to retain its experienced judges and other judicial personnel is beginning to suffer. Efforts to recruit the most qualified and committed candidates to fill judicial openings have been hurt. A significant number of vacancies also exist in staff and support positions throughout the system. Finally, the morale of existing judges and court system employees has been adversely affected.

SUMMARY OF RECOMMENDATIONS

In view of its findings, the Committee strongly recommends that immediate attention be given to the passage of legislation that would rectify the current inadequacies in the judicial system's compensation structure. If Massachusetts is to recruit and retain the most qualified candidates for its judiciary and its judicial staff, compensation levels simply must be increased.

The Committee is not in a position to recommend that a specific course of action be taken with respect to staff salaries, due to the fact that their compensation packages are fixed by collective bargaining agreements. The Committee can only note that salary inadequacies extend to judicial employees as well, and must ultimately be addressed.

With respect to the judges themselves, the starting point for any remedy requires, at a minimum, that salary adjustments be made to compensate for the cost of living increases that have occurred

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in the last four years. Accordingly, the Committee recommends, at
the very least, that the following steps be taken:

1. Judicial salaries should be increased in
   biannual installments at a rate of 6% per
   installment, until the effective compensation
   rate (as measured in inflation-adjusted
   dollars) has been returned to at least its 1988
   level; and

2. A permanent mechanism should be established
   whereby judicial salaries, at a minimum, would
   be indexed to the inflation rate or to cost of
   living increases.

The Committee is acutely aware, in making its recommendations,
that there are numerous other agencies and individuals seeking
increases from limited state funds and that other state employees
have also gone for years without salary increases. The justice
system, however, is the bedrock upon which our society and
competitive economic position rest. Without an immediate
investment in the individuals employed in that system, the
resulting decay will require far more money and far more time to
correct in the future.

HISTORY OF JUDICIAL COMPENSATION

Historically, adjustments to judicial compensation levels in
Massachusetts have suffered from the characteristic of being too
little, too late. Because of the perceived unseemliness of
judges' requesting pay increases for themselves in the halls of
the state legislature, adjustments to judicial salaries have
typically been overlooked for lengthy stretches of time. As a
consequence, on those occasions when attention finally has been
paid to the issue, the salary adjustments needed to correct for the considerable time that has passed since the last adjustment have been substantial and politically difficult. Judicial compensation levels have therefore tended to fall further and further behind.

Recent history exemplifies the problem. The last judicial pay adjustment was enacted in 1987 and took effect on July 1, 1988. Since that time, more than four years ago, no adjustments of any kind have been made to judicial salaries, not even adjustments for cost of living increases. It thus comes as no surprise that, during this period, discrepancies in the compensation paid to Massachusetts judges vis-a-vis their colleagues in other states, their counterparts in the federal judiciary, and attorneys in the private sector have widened. Not only have Massachusetts judges failed to keep pace with their peers in other jurisdictions but also, in inflation-adjusted dollars, their effective salary has actually decreased.

Identical problems have plagued employees within the judicial system. As with judges, the last general wage adjustment for judicial employees took effect in July, 1988. Since that time, there has been not only a salary freeze, but also a promotion and hiring freeze. Without even cost of living increases, judicial employees have watched their real income decline with each passing year. Details evidencing these trends are presented below.
ANALYSIS OF CURRENT COMPENSATION LEVELS

Inflation-Adjusted Salary Figures

According to statistics obtained from the United States Department of Labor, the Consumer Price Index for urban consumers has risen more than 18% since the last judicial salary adjustment in July, 1988. The charts presented in Figures A and B below demonstrate the resulting impact on judges' inflation-adjusted earnings. The compensation levels established in 1988 specified a salary of $90,450 for justices on the Supreme Judicial Court; $83,708 for judges on the Appeals Court; and $80,360 for judges at the Trial Court level.\(^1\) The absence of even cost of living adjustments in the last four years has had the effect of reducing judicial salaries, as measured by constant 1988 dollars, to the following levels: $74,169 for the Supreme Judicial Court, $68,640 for the Appeals Court; and $65,895 for the Trial Court. In effect, therefore, Massachusetts judges have experienced, on average, a pay cut of approximately $15,000 over the course of the last four years. Simply to bring effective pay rates back to their 1988 level (in terms of purchasing power) would require a salary of $106,731 for the SJC; $98,775 for the Appeals Court; and $94,824 for the Trial Court.

\(^1\) Massachusetts has 7 Supreme Judicial Court justices, 14 Appeals Court judges, and 320 Trial Court judges. The Trial Court judges are divided among the following categories: (a) 168 District Court judges; (b) 76 Superior Court judges; (c) 43 Probate and Family Court judges; (d) 12 Juvenile Court judges; (e) 11 Boston Municipal Court judges; (f) 6 Housing Court judges; and (g) 4 Land Court judges. Chief Judges (or Justices) receive an additional increment to the base salary.
The preceding information is presented graphically in Figures A and B on the following two pages. Figure A demonstrates state judges' effective salary reduction since 1988 as measured by percentage of loss. Figure B demonstrates the salary reduction as reflected in constant 1988 dollars. The charts illustrate, in striking fashion, that not only have Massachusetts judges received no pay increase, they have not even held their ground.

Precisely the same analysis holds true for judicial employees. Although the breadth of different staff positions and salaries makes it difficult to prepare comprehensible charts, the impact of inflation on the income of judicial employees has been no less severe. As with judges, the 18% rise in the Consumer Price Index since July, 1988 translates into an effective 18% pay cut for judicial staff. For example, a court employee locked into a salary of $27,468 since 1988 has watched her inflation-adjusted income decline to $22,524 in constant 1988 dollars.

Comparative State Salaries

Massachusetts judicial salaries fare poorly when contrasted with the salaries received by judges in states of comparable population and economic base. According to statistics published by the National Center for State Courts, Massachusetts ranked 26th in high court salaries, 28th in intermediate appellate court salaries and 25th in general trial court salaries, nationwide, as of July, 1992.

The comparison only becomes worse when one looks specifically at northeastern and mid-Atlantic states of comparable population
Effective Salary Losses for Massachusetts Judges
(Due to Increases in Cost of Living*)

* U.S. Department of Labor. Consumer Price Index for All urban Consumers (CPI-U), Boston, MA, All items 1982-84=100

Figure A
Massachusetts Judges' Salaries in Constant 1988 Dollars*

* Adjusted by the CPI-U, Boston, MA, All items 1982-84=100

Figure B
and economic base. As against New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland and the District of Columbia, Massachusetts ranks 9 out of 10 in high court salaries, last in intermediate appellate court salaries, and ninth in trial court salaries. Moreover, Massachusetts salaries fall considerably below the mean in each of these categories, which are $103,207, $95,094 and $92,645, respectively.

The same result occurs if one compares Massachusetts with comparable industrial states nationwide. As against California, Florida, Illinois, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania and Texas, Massachusetts ranks 10 out of 12 in high court salaries, last in intermediate court salaries, and eighth in trial court salaries. Again, Massachusetts salaries are below the mean in each of the categories, which are $101,098, $94,979 and $86,814. Moreover, only two of these twelve states have gone without any salary adjustments for as extended a period of time as Massachusetts.

The lower absolute salaries received by Massachusetts judges tell only part of the story. Consumer price indices obtained from the U.S. Department of Labor demonstrate that, with the exception of New York City and its immediate environs, Massachusetts has a higher cost of living than virtually any other region in the 48 contiguous states. Thus, not only do Massachusetts judges make

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2/ In 1987, the Massachusetts Advisory Board on Legislative, Judicial and Constitutional Officers' Compensation recommended that these eleven states be used as a benchmark against which to evaluate the adequacy of Massachusetts judicial compensation.
less money than their counterparts in other states, but the purchasing power of their salaries is lower still.

**Comparative Federal Salaries**

Massachusetts judges are also paid far less than their federal counterparts. United States Supreme Court justices receive a salary of $159,000, judges on the U.S. Circuit Courts of Appeal receive $137,300, and federal District Court judges receive $129,500.

Although there has always been a gap between state and federal judicial salaries, that gap has widened dramatically in the last five years. In 1988, Massachusetts Supreme Judicial Court justices earned 82% of a U.S. Supreme Court justice’s salary; Appeals Court judges received 88% of the salary of their federal Court of Appeals counterparts; and Massachusetts trial judges earned 90% of the salary of federal District Court judges. Those percentages have dropped to 57%, 61% and 62%, respectively.

**COMPENSATION OF JUDICIAL EMPLOYEES**

The last general wage adjustment for judicial employees also took place in July, 1988. Since that time, a lack of funding has compelled not only a salary freeze, but also both a promotion and a hiring freeze. Departing employees typically have not been replaced, and retention and recruitment of qualified staff have become significant problems. Indeed, due to the freeze as well as the difficulty of attracting qualified candidates for those limited positions that have funding, the most recent figures
reveal a total vacancy rate across the entire court system of approximately 1,200 positions. Reduced numbers of staff have had to assume increased duties and responsibilities in exchange for wages that have been declining, in real terms, for the last four years. In short, employees have seen their real wages go down, and their workload go up.

The resulting, detrimental impact on the overall operation of the courts has been substantial. Judicial employees and staff occupy integral support positions throughout the system. Courtroom clerks, court officers, secretarial and administrative staff -- to name but a few of the positions -- all play vital roles in the courts' ability to handle cases and respond to the people who use the courts. Notwithstanding the important functions performed by these individuals, the Trial Court alone has suffered a 13% decrease in staffing over just the past two years. This significant reduction in resources, when combined with the judiciary's ever-increasing workload, has strained the system to its limits.

ANALYSIS OF THE JUDICIAL SYSTEM'S WORKLOAD

Although it is not the purpose of this Report to survey comprehensively the job-related pressures facing the Massachusetts judicial system, there can be little dispute that the workload of state judges and judicial system employees has continued to increase. Some general observations are in order.
First, changes in the federal courts have prompted increasing numbers of litigants to proceed in state court in the first instance. The actions commenced in state court have become concomitantly more complex.

The dismal economy has also affected and continues to affect the judiciary's workload, resulting, for example, in increased numbers of more complicated financial disputes.

The citizens of Massachusetts are relying more and more on the judicial system to address societal problems. As described below, the numbers of care and protection proceedings and juvenile proceedings before the courts have exploded in recent years.

Statistics quantifying the increases in number of cases filed tell part, but by no means all of the story. At the trial court level alone, a comparison of statistics between 1988 and 1991 reveals the following:

1. 10% more cases were filed in the Superior Court in 1991 than in 1988;
2. 47% more Care and Protection cases, 1.9% more criminal charges, 1.3% more civil cases, and 4.3% more juvenile charges were filed in the District Court;
3. 16.3% more cases were filed in the Probate and Family Court;
4. 33.4% more cases were filed in the Juvenile Court;
5. 20% more criminal entries, 16% more jury-of-six cases, and 3.8% more civil cases were filed in Boston Municipal Court; and
6. 117% more entries were filed in the Land Court.
In the appellate system, 15% more cases were filed in the Appeals Court and SJC, combined, in the 1991/92 Term than were filed in the 1988/89 Term.

Despite increasing strides in improving the system's efficiency, the sheer number of cases filed has resulted in extremely heavy caseload levels. Thus, as noted in the Report of the Boston Bar Association's State Court Study Committee (June 1991), Superior Court judges routinely handle far more cases in their sessions than the 1000 cases per judge maximum recommended in the past by the National Center for State Courts. The most recent statistics from September, 1992 demonstrate that the average caseload level in Superior Court time standards sessions across Massachusetts is approximately 1500 cases per judge. Some courts labor under even heavier burdens. To give but a few examples, in Essex, there are approximately 2600 cases per judge; in Worcester, it is 2400; in Norfolk, it is 2100.

Meanwhile, the pressure placed on judges and court employees to speed the processing time for cases continues to mount. Judges are expected to deal with more cases and dispose of them more quickly. The implementation of the Time Standards system in Superior Court is simply one manifestation of this phenomenon. Those judges who operate under the constraints of Time Standards must spend more time on active case management than ever before.

In sum, judges and their support staff are being subjected to ever greater demands at the same time that their effective income is falling.
IMPACT OF INADEQUATE COMPENSATION

The impact of inadequate compensation levels is now being felt in force and can be expected to intensify rapidly if not corrected in the near future. Not surprisingly, one significant ramification has been harm to morale, as judges and other judicial staff perceive a fundamental lack of appreciation for the services they render and the sacrifices they make.

Besides contributing to low morale, the current salary inadequacies can be expected to damage the state's judicial retention rate. Faced with declining "real" (inflation-adjusted) income, and workloads that grow heavier each year, an increasing number of judges inevitably will reevaluate their decision to finish their careers on the bench. Although it has always been true that most judges earn considerably less than they would as attorneys in private practice, and hence make a sizeable financial sacrifice to accept appointment to the bench, there is a limit to how large the sacrifice can become and remain tolerable. The Committee's informal inquiries suggest that the limit either has already been reached, or soon will be.

Compounding the situation are the special difficulties faced by younger judges. In the past, attorneys were generally not named to the bench until later in their careers, when they had accumulated some savings after years of practice and their children had finished college. Newly appointed judges, however, are often much younger than before. Faced with children still to
enter college, judges find it much less financially feasible to remain on the bench, especially when they see their effective rate of pay constantly declining. Without question, judges understand and accept the reality that they will generally have lower standards of living than they would if they were in private practice. When confronted, however, with a stark choice between staying in a position that will render them unable to furnish the education they wish for their children, and leaving the bench for private practice, many will inevitably leave. As Federal Circuit Judge Leon Higginbotham stated in 1988, when testifying in support of increasing federal judicial salaries to their current levels:

I don’t feel badly when judges get second hand cars and keep them for ten years. They can live with that. I don’t feel badly when judges have suits which are almost threadbare. They can live with that. And I don’t feel badly if judges cannot afford country clubs. Society can survive with that. But for all of us as judges, we know that the passport of opportunity for us was education; the ability to attend the best universities in this nation and then go out and make a contribution to hopefully improve the quality of life. And judges today are confronted with the real problem as to whether they can provide for their children the type of educational opportunities which they had.

The other side of the difficulty in retaining judges is an increasing inability to recruit the most qualified candidates to fill judicial vacancies. Committee inquiries to the Judicial Nominating Council have revealed a number of instances where people approached with respect to judicial vacancies have identified salary inadequacies as a significant factor weighing against acceptance of an appointment to the bench. This is the
most far-reaching effect of inadequate compensation levels. If the most qualified judicial candidates cannot be recruited and retained, the ranks of Massachusetts' life-tenured judiciary will become filled with second-choice appointments. The resulting harm will be felt for years to come.

Retention and recruitment of qualified judicial staff have become significant problems as well. As a consequence of the freeze and the difficulty of attracting qualified candidates for the few positions that have funding, there currently exists a vacancy rate of approximately 1,200 positions across the system. This substantial shortage in human resources has had a significant detrimental impact on the courts' operation.

**RECOMMENDATIONS**

The above discussion has made clear the inadequacies that afflict compensation levels within the Massachusetts judicial system. Judges and judicial employees have seen the purchasing power of their salaries decline in the last four years, and their rates of pay vis-a-vis comparable states and their federal counterparts worsen. To recruit and retain the most qualified judges and staff, the existing inadequacies in compensation must be rectified.

As a practical matter, the Committee is not in a position to recommend that a specific course of action be taken to address the inadequacies in staff compensation. Virtually all judicial employees are members of unions, with compensation packages fixed
by collective bargaining agreements. The Committee can and does note, however, that compensation inadequacies are not limited to the judges alone; they extend to judicial employees as well. If the quality of the system is to be maintained (and improved), the issue of staff compensation must ultimately be addressed.

No such limitations hinder the Committee's ability to make recommendations concerning judicial salaries. The starting point for any remedial scheme, at a minimum, requires making those salary adjustments necessary to compensate for the cost of living increases that have occurred in the last four years. It is very likely, however, that the magnitude of such a salary correction, if made all at once, would be politically difficult. Accordingly, the Committee recommends that, at the very least, judicial salaries be increased in evenly spaced biannual installments at a rate of 6% per installment, until the effective compensation rate (as measured in inflation-adjusted dollars) has been returned to its 1988 level. Such an adjustment will restore inflation-induced losses and also return Massachusetts' judicial salaries to a level comparable with salaries paid in states of similar population and economic base.3

3/ The current inflation data would require that judges receive an 18% pay adjustment, spread over two fiscal years as follows: 6% on January 1, 1993; 6% on July 1, 1993; and 6% on January 1, 1994. If the inflation rate were to rise further between now and the third payment, additional corrective installment(s) would be required. The Committee notes that, as of the date this Report was transmitted to the printer, the state legislature had just given initial approval to a pay raise for most state workers. If such legislation ultimately is passed, and it provides for pay increases to be implemented more rapidly than specified in (Footnote 3 continued on following page)
To eliminate the historic tendency for judicial compensation levels to fall further and further behind, the Committee also recommends that a permanent mechanism be established whereby judicial salaries would be indexed to the inflation rate or to cost of living increases. This would ensure that in the future, the Commonwealth will not be faced with the same problem as that which it must remedy today.

In urging the legislature to reevaluate and adjust judicial salaries, the Committee is cognizant that its recommendations must compete with many other agencies, organizations and individuals for limited state funds. The Committee wants to make clear that it is by no means suggesting that judicial salaries be set at a level that could compete with the money earned by successful attorneys. It will always be the case that accepting an appointment to the bench will entail, for most individuals, a significant financial sacrifice. It is not fair, however, for judges who make that sacrifice to watch the burden grow heavier and heavier each year. Judges named to the bench in 1988 cannot possibly have expected that they would be asked to absorb, effectively, an 18% pay cut over the next four years.

Historically, Massachusetts has had a judiciary and a judicial system of which its citizens have been justifiably proud. That system is a precious resource which must be

(Footnote 3 continued from previous page)

this report, the Committee would recommend that judges receive their installments on whatever timeframe is most accelerated.
maintained. In this Committee's opinion, the system's continued excellence urgently depends on restoring equity to the state's judicial compensation levels. Ultimately, it is the bar's obligation to call upon the Executive and the Legislature to take those steps necessary to maintain the quality of our courts. This Report is intended to serve as that call.

Richard W. Renehan, Chair
Hill & Barlow

Joan A. Lukey
Hale & Dorr

John M. Harrington, Jr.
Ropes & Gray

Laura Steinberg
Sullivan & Worcester