

DETERMINING A JUDICIAL SALARY STRUCTURE: WHAT'S FAIR?

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FOREWORD

This study was prepared in response to Senate Concurrent Resolution No. 2, S.D. 1 (1997). The Resolution directs the Legislative Reference Bureau to study and make recommendations on an appropriate salary structure for all state judges, including pay supplements by increments for length of continuous creditable service on the bench. In addition, the Resolution requests the Bureau to address the feasibility of indexing judicial salary increases to the consumer price index or increases in compensation for other state civil service employees. The Resolution further requests the Bureau to consult with the Judicial Salary Commission to obtain relevant information.

The Bureau wishes to extend its sincere appreciation to all who provided assistance and cooperation for this study. In particular, the Bureau would like to thank members of the Judicial Salary Commission, former co-chair of the Commission, Mr. Max Sword, Chief Justice Ronald Moon, Mr. Michael Broderick, Administrative Director of the Courts, Mr. Larry Coldiron, Administrator of the Budget and Statistics Division of the Judiciary, and Ms. Christina Uebelein, Administrator of the Planning and Program Evaluation Division of the Judiciary for their time in providing invaluable input.

Wendell K. Kimura
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INTRODUCTION

Chapter 1

INTRODUCTION

Objective of the Study

The Legislature, recognizing the direct relationship between judicial compensation and judicial retention, has acknowledged that insufficient compensation creates the risk that judges will leave the bench, thus depriving the public of the significant value of experienced jurists.¹ Accordingly, the Legislature has declared that “there is a paramount need to ensure that the most highly qualified individuals are willing and able to serve in the State’s judicial branch without unreasonable economic hardship; . . .”² To that end, the Legislature, during the Regular Session of 1997, adopted Senate Concurrent Resolution No. 2, Senate Draft No. 1, (hereafter Resolution) entitled “Requesting a Study to Assist the Legislature in Establishing an Appropriate Salary Structure and Pay Increments for Length of Continuous Creditable Judicial Service to the State”. The text of the Resolution appears as **Appendix A**.

The Resolution is premised upon the following two basic assumptions: that, because of the absence of an objective, statutorily established mechanism that ensures fair and adequate compensation, Hawaii’s judges are continuously drawn into the potentially compromising task of lobbying each Legislature for salary increases and improvements in benefits; and that such lobbying of the Legislature by members of the Judiciary is inconsistent with the traditional role of the courts as an independent and separate branch of government. On this latter point, the Resolution stresses the fundamental importance of the Judiciary's political neutrality and independence, in fact as well as in appearance.³

The Resolution directs the Legislative Reference Bureau (hereafter the Bureau) to study and make recommendations on an appropriate salary structure for all state judges,^{*} including pay supplements by increments for length of continuous creditable service on the bench, and to address the feasibility of indexing judicial salary increases to the consumer price index or increases in compensation for other state civil service employees. The Resolution further requests the Bureau to consult with the Judicial Salary Commission to obtain relevant information.

**For purposes of this study, the terms “judge” and “judges” include both judges and justices.*

¹Senate Concurrent Resolution No. 2, Senate Draft No. 1, Regular Session of 1997, at 1.

²Id.

³Id. at 2.

Methodology of Study

In responding to the Resolution, Bureau staff reviewed the relevant history relating to judicial salaries and the judicial salary structure in Hawaii and also examined the judicial salary structure and statutory provisions in other states. In addition, Bureau staff reviewed the relevant literature relating to judicial compensation issues. Finally, Bureau staff solicited input from the Judicial Salary Commission and the Judiciary with respect to judicial compensation issues.

Organization of the Report

This Chapter presents an introduction to the report.

Chapter 2 provides a historical framework for the study by reviewing the present judicial salary structure as well as previous attempts to establish an appropriate salary structure.

Chapter 3 discusses objective mechanisms that states have adopted to provide periodic adjustments to judicial salaries and reviews specific state statutory provisions relating to these mechanisms.

Chapter 4 discusses factors involved in determining fair and reasonable judicial compensation.

Chapter 5 summarizes input obtained from members of the Hawaii Judicial Salary Commission on the subject of judicial compensation.

Chapter 6 presents a summary and the Bureau's recommendations.

Chapter 2

HISTORICAL FRAMEWORK FOR JUDICIAL SALARY STUDY

This study is not the first to attempt to recommend an appropriate salary structure for Hawaii's judges. There have been a number of such attempts over the years. Nevertheless, while judicial salaries have increased at sporadic intervals, the salary structure itself has remained basically unchanged. Although the reasons why these previous attempts have been unsuccessful may be open to debate, what becomes apparent, upon a review of the history, is that the determination of judicial salaries has been a complex process, complicated even more by the political linking of judicial salaries with other pay issues. This chapter discusses the judicial salary structure presently in place and reviews the previous attempts to establish an appropriate salary structure and determine reasonable salary levels.

Present Judicial Salary Provisions

The Hawaii State Constitution requires a salary commission to review and recommend salaries of all state court justices and judges, but states no specific requirements as to the Commission's composition, duties, or operation. The Constitution further states that the judicial salaries shall be "as provided by law" and prohibits the reduction of judicial salaries during a judge's term of office, except by general law applicable to all salaried officers of the State.¹ Accordingly, the actual salaries of Hawaii's judges are determined by the Legislature by statute. The Legislature periodically appointed temporary commissions to fulfill the constitutional requirement for a salary commission, until the Legislature created an on-going, permanent Judicial Salary Commission in 1989 and charged it with reviewing and recommending salaries of all justices, judges, and appointed judiciary administrative officers.² The statute creating the Commission requires it to submit a report to the Legislature, with copies to the Governor and Chief Justice, by October 15 of each year preceding a fiscal biennium.³ Salary amounts recommended by the Commission are submitted to the Legislature by the Chief Justice as part of the Judiciary's proposed budget, per the statute.

Judicial salaries were last increased in 1990, when the Legislature enacted a two-step increase, retroactive to January 1, 1989 and January 1, 1990, respectively.⁴ Present salaries are as follows: the Chief Justice of the supreme court receives \$94,780 and each associate justice receives

¹Haw. Const. art. VI, §3.

²1989 Haw. Sess. Laws, Act 271.

³Haw. Rev. Stat. §608-1.5.

⁴1990 Haw. Sess. Laws, Act 72.

\$93,780;⁵ the Chief Judge of the intermediate appellate court receives \$91,280 and each associate judge receives \$89,780;⁶ each circuit court judge receives \$86,780;⁷ each district court judge receives \$81,780;⁸ and each district family court judge receives \$81,780.⁹

Relevant History of Judicial Salaries in Hawaii

Judicial salaries in Hawaii have frequently been held hostage to the political process and, on occasion, have been fraught with controversy. Before the permanent Judicial Salary Commission was established, special advisory committees were convened in 1975, 1980, 1984, and 1989 to study the issue of judicial compensation. Each one of these concluded that the level of judicial compensation was inadequate.

In 1975, the Special Committee of the Judicial Council on Judicial Salaries recommended an approximately 45% pay increase for Hawaii's judges, whose salaries had been stuck at 1969 levels, and urged that "provision . . . be made for periodic adjustments to [judicial salaries] to cover cost-of-living adjustments."¹⁰ The Committee based its recommendations upon the determination that salaries should meet these three tests:

- (1) Be commensurate with responsibilities;
- (2) Provide security for judges and their families; and
- (3) Be competitive with what private attorneys make to attract successful and experienced practitioners to the bench.¹¹

The Legislature eventually passed a pay bill for judges, but it was clouded in controversy. Two separate actions by the 1975 Legislature aroused violent public furor in the dying days of the session: a conference committee amendment that raised legislative pensions by 150% without advance hearings or public notice; and a conference committee pay bill that lumped together, in a "take or leave it" package, generous pay increases for judges and top state officials, and also

⁵Haw. Rev. Stat. §602-2.

⁶*Id.* at §602-52.

⁷*Id.* at §603-5.

⁸*Id.* at §604-2.5.

⁹*Id.* at §571-8.2 (salaries same as district court judges).

¹⁰Hawaii, Report of the Commission on Judicial Salaries (Honolulu: 1984), at 27, quoting from Hawaii, Report of the Special Committee of the Judicial Council on Judicial Salaries (Honolulu: 1975) at 4.

¹¹See Honolulu Star Bulletin, February 25, 1975 (editorial).

included pay raises for the Governor and Lieutenant Governor, both of whom had been left out of earlier versions of the pay bill.¹² The public outrage reportedly was so great over the pension bill that legislators petitioned the Governor to veto it, which he did. However, the public animosity carried over to the pay bill as well. In the end, legal challenges to the 1975 executive and judicial pay bill reached the Hawaii Supreme Court, where the justices, refusing to disqualify themselves, upheld its legality.¹³ The ensuing “freeze” on state officials’ pay, including that of judges, has been attributed directly to the public wrath that followed the 1975 session.¹⁴

In this aftermath, the Legislature would not entertain the issue of pay increases for judges again until the regular session of 1981. After the defeat of proposed legislation to establish a permanent advisory judicial salary commission, pursuant to Section 3, Article VI of the Hawaii Constitution, the Judicial Council had reactivated its second Special Committee of the Judicial Council on Judicial Salaries.¹⁵ The Special Committee proposed an across-the-board \$25,000 annual raise for Hawaii’s judges to the 1981 Legislature. The Committee’s report stated: “We believe that failure to adjust judicial salaries cannot fail to adversely affect the state’s ability to recruit and retain adequately qualified judges.”¹⁶ The Committee noted that: in the ensuing years since the last judicial pay raise, the cost of living in Hawaii had risen 50%; the public employees collective bargaining units had received pay raises of approximately 41%; and Hawaii’s judges fared poorly in comparisons with salaries of experienced local attorneys and those of jurists in other jurisdictions.¹⁷

During this time period, there was much public hand-wringing about the widening disparity between pay levels of state and county officials, as well as between collective bargaining unit employees and exempt employees. City and county of Honolulu pay levels had jumped ahead of their state counterparts, primarily because city and county administrative salaries were boosted whenever the pay for top-level union workers was increased, while salaries for state officials and judges had been frozen in place since 1976. This system of tying pay for top officials to levels negotiated for city and county workers in collective bargaining was widely and severely criticized as creating an inherent conflict of interest by giving city and county executives who handle union

¹²See e.g., Jerry Burris & Sandra Oshiro, “Panel OKs 18% hike in top state salaries,” The Honolulu Advertiser, April 24, 1982; A.A. Smyser, “Public Service Pay in Hawaii,” Honolulu Star Bulletin, May 11, 1981; “The real pay issue,” The Honolulu Advertiser, July 11, 1975 (editorial); “The Pay Package,” Honolulu Star Bulletin, July 9, 1975 (editorial).

¹³“’75 raise upheld by top Isle court,” The Honolulu Advertiser, May 13, 1977, at A-10.

¹⁴See A.A. Smyser, “Public Service Pay in Hawaii,” Honolulu Star Bulletin, May 11, 1981; See also Jerry Burris & Sandra Oshiro, “Panel OKs 18% hike in top state salaries,” The Honolulu Advertiser, April 24, 1982.

¹⁵Hawaii, Report of Public Officers and Employees Compensation Review Commission (Honolulu: February 1983), at 11.

¹⁶“Top Judicial Pay of \$72,500 Is Urged,” Honolulu Star Bulletin, March 2, 1981 (Boswell’s Capitol Journal).

¹⁷See Hawaii, Report of Public Officers and Employees Compensation Review Commission (Honolulu: February 1983), at 11-12; “Governor, Judges Deserve Pay Raises,” Honolulu Star Bulletin, March 19, 1981, at A-16.

negotiations a vested interest in reaching higher settlements.¹⁸ Collective bargaining contributed to the pay disparity by pushing up the pay for government employees while the salary levels for top-level state officials and judges remained frozen. This resulted in growing numbers of collective bargaining employees making more than their supervisors.¹⁹

Legislators also were wrestling with problems stemming from the long standing tradition of using the Governor's salary as a benchmark in setting the salaries of all other government officials. Under this system, the Governor's salary was set at the apex of the salary scale, with the pay of cabinet members, the president of the University of Hawaii, and judges set at levels just below that of the Governor and the salary of other, lesser officials at descending levels below that.²⁰ The salary ceiling created by this system was criticized as hampering efforts to keep competent people and to recruit highly qualified new ones. In addition, it created absurd situations whereby top University of Hawaii administrators could get pay raises by quitting and resuming their tenured

¹⁸See, Gregg Kakesako, "Ariyoshi Signs Executive Pay Hike, but Won't Take His," Honolulu Star Bulletin, May 28, 1982 (lawmakers say county executives in conflict-of-interest position every time they negotiate a pay increase for unionized workers); "Beyond pay raises, The Honolulu Advertiser, May 4, 1982 (editorial) (city executives have direct vested interest in increased wages for government workers under them); A.A. Smyser, "Public Service Pay in Hawaii," Honolulu Star Bulletin, May 11, 1981 (removes incentive for city officers to represent the taxpayers in holding out for restrained collective bargaining increases); A.A. Smyser, "Public Service Pay in Hawaii," Honolulu Star Bulletin, May 11, 1981 (removes incentive for city officers to represent the taxpayers in holding out for restrained collective bargaining increases); "Better system needed: Raising government pay, The Honolulu Advertiser, March 11, 1981 (editorial) (system gives city executives a vested interest in higher settlements for workers they oversee); Jerry Burris, "Citizens panel urges legislators to give top state aides 20% raise," The Honolulu Advertiser, January 9, 1981 (inherent conflict of interest in that union negotiations that are handled by county executives directly impact executives' own salaries).

¹⁹See Vance C. Cannon, "State Commission on Government Salaries, Honolulu Star Bulletin, February 26, 1983 (commission's research continually found subordinates making more than their superiors); Jerry Burris, "Legislature faces trouble over secret talks on pay, The Honolulu Advertiser, April 29, 1981 (with defeat of 1981 pay bill, estimated that by 1982, there would be approximately: 578 unionized workers earning more than appointed cabinet officers in jobs superior to theirs; and 200 non-unionized supervisory personnel denied raises given to co-workers because salary ceiling prevents them from earning more than their bosses).

²⁰See e.g., Richard Borreca, "Governor's commission proposes hefty pay hikes," Honolulu Star Bulletin, March 3, 1989 (commission recommended rising executive salaries to ensure governor made more than other elected officials in Hawaii); "Government pay" Honolulu Star Bulletin, February 26, 1989 (editorial) (long considered impossible for any state official to be paid more than the governor); Rob Perez, "Bill would make justices highest-paid state officials," Honolulu Star Bulletin, February 18, 1989 (quotes Senator Ron Menor, Chair of the Senate Judiciary Committee, regular session of 1989, as saying, "If the chief justice of the Supreme Court makes substantially more than the governor, I don't know if the public would buy that or if I'll buy that"); Jerry Burris, "State officials asked to propose a figure for governor's raise," The Honolulu Advertiser, February 26, 1985 (Comment that, "as a matter of principle, governor should be highest-paid public official in the state," attributed to Senator Gerald Machida, Chair of the Senate Labor and Employment Committee); Vance C. Cannon, "State Commission on Government Salaries, Honolulu Star Bulletin, February 26, 1983 (commission made determination that position of governor should be highest paid public office in state); Douglas Boswell, "Top Judicial Pay of \$72,500 Is Urged," Honolulu Star Bulletin, March 2, 1981 (Boswell's Capitol Journal) (long-standing custom to use governor's salary as benchmark in setting salaries of other government officials); Greg Kakesako, "Several Legislators Back Higher State Executive Salaries, Honolulu, Star Bulletin, January 9, 1981 ("governor should be the highest paid political office in the state," quoting Senate President Richard S.H. Wong, regular session of 1981).

teaching positions.²¹ Other critics pointed out that this system failed to take into account the personal residence staffed with help, the limousine and driver, and other perquisites the Governor receives in addition to an annual salary.²²

These concerns led to calls for a better and more permanent method of determining a salary structure that achieves a realistic relationship between pay levels in government service.²³ As the Star Bulletin put it:

Pay matters are complicated concerns. They affect the government's ability to attract and keep talent. They affect morale and a sense of equity. They are potential dynamite politically.

The state has complicated matters by allowing more than five years to pass between top level readjustments.

For judicial salaries, at least, this is a longer gap between adjustments than in any other state. In level of judicial pay we have dropped from No. 8 among the states to No. 35.

We need not just pay raises for top personnel and judges from this Legislature but a better on-going way of setting and administering them.²⁴

In the swirl of such controversy, the 1981 pay bill died, in part because of a standoff between the House and Senate over the amount of the raise and because of public concern expressed over the closed door negotiations of a special subcommittee of the conference committee, which resulted in a tentative agreement on the final version of the pay package.²⁵ However, in an extended 1982 session, the Legislature finally approved the first salary increase since 1976 for judges, the Governor, his cabinet, University of Hawaii president, and other state officials. In addition to an 18% pay hike, the pay bill: included a freeze on county salaries until the state salary levels could catch up; outlawed the city and county's automatic linkage of salaries of certain elected and appointed county officers to union pay raises; and provided for a reduction in state grants to the counties in an amount equal to any mandatory salary adjustment at the county level that is directly or indirectly dependent upon or related to collective bargaining negotiated salary adjustments. This latter provision was enacted in case either of the first two provisions were struck down by the courts.²⁶ This prohibition on mandatory increases tied to collective bargaining agreements is codified as section 78-18.3 of the *Hawaii Revised Statutes*. (See **Appendix B**)

²¹See A.A. Smyser, "Public Service Pay in Hawaii," Honolulu Star Bulletin, May 11, 1981.

²²See e.g., A.A. Smyser, "Public Service Pay in Hawaii," Honolulu Star Bulletin, May 11, 1981; Jerry Burris, "Citizens panel urges legislators to give top state aides 20% raise," The Honolulu Advertiser, January 9, 1981.

²³See e.g., "Governor, Judges Deserve Pay Raises," Honolulu Star Bulletin, March 19, 1981, at A-16; "Better System Needed: Raising government pay," The Honolulu Advertiser, March 11, 1981.

²⁴"Governor, Judges Deserve Pay Raises," Honolulu Star Bulletin, March 19, 1981, at A-16.

²⁵See, A.A. Smyser, "Public Service Pay in Hawaii," Honolulu Star Bulletin, May 11, 1981; Jerry Burris, "Legislature faces trouble over secret talks on pay," The Honolulu Advertiser, April 29, 1981.

²⁶See, 1982 Haw. Sess. Laws, Act 129, Part IV. See also Jerry Burris & Sandra Oshiro, "Panel OKs 18% hike in top state salaries," The Honolulu Advertiser, April 24, 1982. The constitutionality of these provisions in Act 129 were upheld in *City & County of Honolulu v. Ariyoshi*, 67 H. 412, 689 P.2 757 (1984).

With respect to the city and county's automatic adjustment of top-level officials' salaries based upon collective bargaining agreements, the Legislature stated:

Such an automatic adjustment provision is unsound and inadvisable public policy which is detrimental to the public interest. A basic conflict of interest exists when the county officers whose salaries are adjusted according to collective bargaining agreements are parties in negotiating the collective bargaining agreements. On the other hand, these county officers have a duty to engage in negotiations of collective bargaining agreements with the public interest foremost. The public interest requires the minimum expenditure of public moneys necessary for the efficient operation of government. On the other hand, these county officers will receive higher salaries if significant or substantial, or indeed if any, salary or wage increases are provided under the collective bargaining agreements. Thus the conflict of interest is obvious.

The legislature further finds that such automatic adjustments for any top-level officer of any level of government are anathema to good government and to present sunshine laws of this State. The people of this State deserve to see the methodology of salary increases for top-level officers of all levels of government, and the people should have the opportunity to testify for or against such increases. Such open government is basic to a democracy and the automatic adjustment of salaries of top-level officers, who have the greatest responsibilities to the public, without public display and input violates the principles of a democratic society.²⁷

The Legislature also found the "inequitable, unintegrated, and uncoordinated compensation system" that existed between and among the top-level elected and appointed officers or employees of the state and county government, particularly with respect to the counterpart positions at these two levels of government, to be an "urgent and important matter of statewide concern and interest" that adversely affected overall officer and employee morale and required immediate action."²⁸ Accordingly, the Legislature created a commission to review salaries and to develop and recommend a meaningful, integrated, and equitable comprehensive salary schedule for state and county government officers and employees.²⁹

The Public Officers and Employees Compensation Review Commission submitted its report on a statewide integrated compensation structure in February 1983. The Compensation Review Commission relied upon the traditional "benchmark approach," with the Governor's salary at the apex, to recommend specific compensation levels and individual classification rates.³⁰ The

²⁷Id. at §34.

²⁸Id. at §34A.

²⁹Id. at §36.

³⁰Hawaii, Report of Public Officers and Employees Compensation Review Commission (Honolulu: February 1983), at 17.

Compensation Review Commission's proposed Hawaii state integrated salary system appears as **Appendix C**. The Compensation Review Commission also recommended that a permanent compensation commission be established by the Legislature to provide for the on-going evaluation and review of executive compensation.³¹

The Compensation Review Commission adopted a set of principles to guide it in its deliberations, including that: compensation rates should be sufficiently adequate to attract qualified personnel; compensation rates should be sufficiently competitive in the marketplace; and compensation structure should provide for adjustment due to changing conditions.³² Furthermore, the Compensation Review Commission observed that, in view of past legislative action taken in response to previous compensation commission recommendations, it considered comparisons within the private sector, with due consideration to the labor market existing in Hawaii, to be more relevant to its decision making than factors such as changes in the consumer price index, comparisons with demographic data, or compensation rates of government executives in other jurisdictions.³³ Although the Compensation Review Commission received some praise for its work, 1983 was a time of painful budget cuts, and no steps were taken to implement any of the Compensation Review Commission's recommendations.³⁴

In July of 1984, a Commission on Judicial Salaries was jointly established by the Chief Justice, the Governor, the Senate President and the Speaker of the House of Representatives. After conducting a thorough review of factors relevant to determining salaries, including comparisons of: salaries of judges across the nation and in the federal system; cost of living and personal income per capita across the country; income of private attorneys locally; and salaries of city and state employees, the Commission submitted its report in November 1984. Concluding that the then present salary levels for judges were "woefully inadequate," neither "fair" nor "just," and "an unwarranted obstacle to the recruitment and retention of talented individuals" for the bench, the Commission warned of a "continuing erosion in the quality of justice . . . brought about not by dishonesty and corruption but by mediocrity engendered by the hidden costs associated with public service."³⁵ The Commission further noted that "inadequate judicial compensation" was a "recurring" problem.³⁶ The Commission recommended that the State: adopt a goal of compensating its jurists at a level comparable with judges of similar responsibility in the federal

³¹Id. at 25-29. This idea has been repeatedly voiced by other temporary commissions in the past, including by the Governor's Committee on Executive Salaries, Report dated January 1981. See e.g., id. at 10; Hawaii, Report of the Commission on Judicial Salaries (Honolulu: 1984), at iii.

³²Hawaii, Report of Public Officers and Employees Compensation Review Commission (Honolulu: February 1983), at 23.

³³Id. at 17.

³⁴See "Stalled pay issue," Honolulu Star Bulletin, February 20, 1983 (editorial).

³⁵See Hawaii, Report of the Commission on Judicial Salaries (Honolulu: 1984), at iii & 30.

³⁶Id. at iii.

court system; and establish a permanent judicial salary commission, pursuant to Article VI, Section 3, of the State Constitution, to provide on-going salary review and recommendations of fair, reasonable, and just salary levels.³⁷

Despite the Commission's strongly worded report, Hawaii's judges would not see another pay increase until the regular session of 1986, an interval of four years since the previous increase. In 1986, the Legislature raised salaries for the associate supreme court justices by 47%, the appellate court judges by 41%, the circuit court judges by 37%, and the district court judges by 25%. The salary for the Chief Justice of the supreme court increased from \$56,430 to \$80,000, and the salary for the Chief Judge of the intermediate appellate court increased from \$53,460 to \$75,500.³⁸

In 1989, a Citizens' Salary Commission proposed an 18.5% increase for the Governor and top state executives. At the same time, a separate Advisory Committee on Judicial Salaries, appointed by the Chief Justice, submitted its report recommending salary increases for judges of 20 to 25%, stating that it was "imperative" that the level of judges' salaries have "at least a reasonable relationship" to what they could earn otherwise, in order to attract and retain qualified attorneys to the bench. The Advisory Committee conceded that, because judicial office offers "attractions [that are] entirely independent of financial considerations," comparisons between judicial salaries and those in the private sector "cannot be considered in a vacuum." Nevertheless, it maintained that financial compensation must be "at least marginally competitive" and, while not the "principal incentive for public service, neither should it be a deterrent" to public service.³⁹

The Advisory Committee also emphasized the valuable contribution that experienced judges provide and concluded that encouraging these judges to remain on the bench would be in the "best interests of the judiciary and the community."⁴⁰ To achieve this goal, the Advisory Committee also recommended a three-tiered salary structure for circuit and district court judges that would provide for periodic salary increases based upon years of service in each court. The Advisory Committee proposed that: district court judges receive a \$5,000 salary increase after their first six-year term, thus encouraging them to apply for retention, and another \$5,000 salary increase after ten years on the district court bench; and circuit court judges receive a \$5,000 salary increase halfway through their first term (at five years) and another \$5,000 salary increase after the start of their second ten-year term. Under this proposed salary structure scheme, district court judges with ten years of experience would receive as much as a newly appointed circuit court judge, and circuit court judges with more than ten years of experience would earn as much as an associate judge on

³⁷Id. at iii & 25. A 4% pay hike had just gone into effect on July 1, 1984, for federal judges, setting the pay at \$80,400 for judges of the United States courts of appeal and at \$76,000 for judges of the United States district courts. Id. at 17.

³⁸Stirling Morita & Gregg Kakesako, "Governor, Cabinet Officers, State Judges Given Pay Raises," Honolulu Star Bulletin, May 14, 1986. The increase was retroactive to January 1, 1986.

³⁹Hawaii, Report of the Advisory Committee on Judicial Salaries (Honolulu: 1989), at 14-15 (emphasis supplied).

⁴⁰Id. at 26.

the intermediate court of appeals. The Advisory Committee reasoned that this would allow judges who enjoy their work to remain at their current court level without either financial sacrifice or feeling compelled to apply for a higher level judgeship simply to increase their salaries.⁴¹

The regular session of 1989 ended with hefty pay raises of 18.4% for the Governor and 24.7% for department directors. The executive raises were in two phases; the first retroactive to January 1, 1989; and the second effective January 1, 1990.⁴² There were no salary increases for judges, however. Nevertheless, the Legislature did finally establish a permanent Judicial Salary Commission, charged with reviewing judicial salaries and submitting recommendations by October 15 of each year preceding a fiscal biennium.⁴³

The next year, the Legislature approved a two-step salary increase for Hawaii's judges, similar to the executive raises passed the previous year: the first step was an average 18.22% increase retroactive to January 1, 1989; and the second was an average of 4.78% increase retroactive to January 1, 1990.⁴⁴ This increase brought the salary of the Chief Justice even with that of the Governor.

Although the newly created Judicial Salary Commission submitted reports to the Legislature in 1994 and 1995, concluding that salaries of Hawaii's judges were inadequate, it reportedly "withdrew" its recommendations for any increase "in deference to the State's slower economy and concerns regarding state finances."⁴⁵

Prior to the Regular Session of 1997, however, the Judicial Salary Commission made a strong case for a pay raise for Hawaii's judges. Noting in its report to the Legislature that the salaries of Hawaii's judges were below the national median at every judicial level, the Commission contended that Hawaii's judges fared even worse when salary comparisons among the states were adjusted to eliminate disparity caused by differences in per capita income. (See **Appendix D.1 to D.3**).⁴⁶ Moreover, relying upon 1996 data, the Commission reported that Hawaii was the only state that had not increased the salary of its judges since 1990 and was one of

⁴¹See *id.* at 24-28.

⁴²See 1989 Haw. Sess. Laws, Act 329, §1, amending Haw. Rev. Stat. §26-51.

⁴³See 1989 Haw. Sess. Laws, Act 271, codified at Haw. Rev. Stat. §608-1.5.

⁴⁴See 1990 Haw. Sess. Laws, Act 72, §§3-6; Hawaii Judicial Salary Commission, Report on Judicial Salaries (Honolulu: October 1996) at 8 [hereinafter cited as 1996 Hawaii Salary Commission Report].

⁴⁵*Id.* at 8.

⁴⁶*Id.* at 10-12. The Commission, using 1996 data from the National Center for State Courts, applied the following "normalizing" formula: (per capita income in Hawaii) divided by (per capita income in state "A") multiplied by (actual judicial salary in state "A"). The Commission conceded that such comparisons should be viewed with caution because "per capita income" alone is not considered a complete assessment of a state's cost of living index. *Id.* at 11, n. 5.

only four states that had not increase judges' salaries at least twice since 1990.⁴⁷ The Commission recommended a 15% judicial salary increase, 5% of which would be retroactive to July 1, 1996.⁴⁸ The Commission observed, at the time, that such an increase would raise Hawaii's national ranking for judicial salaries from 35th to 14th in the nation.⁴⁹

In considering many factors relevant to determining fair and reasonable salary levels, the Commission's Report made the following observations:

- Federal jurists in Hawaii have received salary increases totaling approximately 38% over the last four years, and presently the lowest paid federal magistrate makes \$28,132 more than the Chief Justice of the Hawaii Supreme Court;⁵⁰
- Compensation of Hawaii's judges is substantially lower than the income of Hawaii attorneys in private practice;⁵¹
- Since 1990, collective bargaining unit 13 (professional and scientific employees), the University of Hawaii Professional Assembly, and collective bargaining unit 8 (the University of Hawaii administrative, professional, and technical employees) have received a 14.44%, 14.51%, and a 14.45% salary increase, respectively;⁵²
- At least eighty individuals at the University of Hawaii, including executives, deans and directors, researchers, and professors receive salaries that are higher than the Chief Justice's salary — this group includes the dean of the School of Law and a professor of law;⁵³ and
- Judicial pay scales have not kept pace with the cost of living in Hawaii.⁵⁴

⁴⁷ 1996 Hawaii Salary Commission Report, at 10. The Commission relied upon data from the National Center for State Courts, "Survey of Judicial Salaries" (Williamsburg: July 1996 ed.).

⁴⁸ The Commission's actual recommendations are contained in a letter from the Commission to the Honorable Members of the Nineteenth Legislature, dated January 13, 1997.

⁴⁹ Id.

⁵⁰ See 1996 Hawaii Salary Commission Report, at 12-13.

⁵¹ Id. at 16.

⁵² Id. at 18 (Figure 3).

⁵³ Id. at 19.

⁵⁴ Id. at 19-20.

In addition to recommending the judicial salary increase, the Commission made the following recommendations: that judicial salaries should automatically increase in the same percentage as the median percentage of other state civil service compensation plan adjustments, to obviate the need for large, catch-up increases; and that a study should be conducted to establish an appropriate salary structure for all judges, with the rates of compensation at each court level supplemented by increments for length of service on the bench.⁵⁵

During the 1997 regular session, the Legislature, in evident agreement with the Commission that Hawaii's judges deserved a salary increase, enacted House Bill No. 1393, C.D. 1, which appropriated salary increases of 4% for each of fiscal years 1996-1997, 1997-1998, and 1998-1999 for supreme court justices, intermediate appellate court judges, circuit court judges, and district court judges. However, the Governor vetoed the bill, contending that a pay raise without pension changes would only provide judges incentive to leave the bench with full pension after their ten-year vesting period on the bench.⁵⁶

⁵⁵Letter from the Judicial Salary Commission to the Honorable Members of the Nineteenth Legislature, dated January 13, 1997.

⁵⁶Benjamin J. Cayetano, Governor of Hawaii, Statement of Objections to House Bill No. 1393, Regular Session of 1997 (June 20, 1997).

Chapter 3

JUDICIAL SALARY PROVISIONS OF OTHER STATES

In determining a fair and equitable salary structure for Hawaii's judges, it is useful to look at other states' judicial salary provisions. The National Center for State Courts regularly publishes a Survey of Judicial Salaries. Relying upon the National Center's July 1996 edition of its "Survey of Judicial Salaries", the Judicial Salary Commission's 1996 report had noted that Hawaii was the only state that had not increased the salary of its judges since 1990 and was one of only four states that had not increase judges' salaries at least twice since 1990.¹ The passage of time has done nothing to improve Hawaii's dismal record in this regard. The National Center's Fall 1997 edition of the salary survey, which reflects judges' salaries as of July 1, 1997, indicates that: thirty-eight states have reported changes in the salaries of judges since the Commission's 1996 report; and thirteen states already have enacted increases in judicial salaries that will be effective sometime at the end of 1997 or during 1998.²

The National Center for State Courts reported the following salary ranges as of July 1, 1997:

- Salaries of associate justices of the highest courts range from \$78,762 to \$133,600, with a mean (average) of \$103,965 and a median of \$104,554;
- Salaries of judges of intermediate appellate courts range from \$79,413 to \$124,200, with a mean of \$102,527 and a median of \$101, 591;
- Salaries of judges of general jurisdiction trial courts range from \$73,616 to \$115,300 with a mean of \$93,041 and a median of \$91,433.³

Hawaii's judicial salaries fall near the bottom of these ranges. The National Center's Survey ranked Hawaii's judicial salaries as follows among the other states: the justices on the supreme court and the intermediate court of appeals rank 36 out of 50 and 30 out of 39, respectively, and the circuit court judges rank 30 out of 50.⁴ The Judicial Salary Commission has contended that the salary rankings for Hawaii's judges fall even lower when salary comparisons among the states are adjusted to eliminate disparity caused by differences in per capita income.⁵

¹Hawaii Judicial Salary Commission, Report on Judicial Salaries (Honolulu: October 1996). The Commission relied upon data current as of October 1996.

²See National Center for State Courts, "Survey of Judicial Salaries," (Williamsburg: Fall 1997), at 10 [hereinafter cited as NCSC Salary Survey]. The thirteen states are: Arizona (1/5/98), Arkansas (7/1/98), Connecticut (10/1/98), Florida (7/1/98), Michigan (1/1/98), Nebraska (7/1/98), Nevada (1/3/99), North Dakota (7/1/98), Oklahoma (1/1/98), South Carolina (7/1/98), Texas (9/1/98), Vermont (1/4/98), and Virginia (12/1/97). See *id.* at 11.

³*Id.* at 1.

⁴*Id.* at 10.

⁵See Chapter 2, note 46 and accompanying text.

Although actual judicial salary levels are an undeniably important element of an adequate salary structure, more critical perhaps is the establishment of an on-going objective mechanism that ensures regular judicial salary adjustments are made at a fair and reasonable level. At least twenty jurisdictions have adopted some mechanism that attempts to provide periodic increases to judicial salaries, while avoiding some of the political entanglements that often are involved in such endeavors. Three types of mechanisms for judicial salary adjustments will be discussed in this chapter.

The first mechanism, referred to in the literature as an automatic salary escalator provision, involves tying judicial salary increases to some factor that, when it occurs, will result in an automatic increase in pay for all judges. For example, judges salaries may be tied to pay increases for a certain group of state employees or to a cost of living pay increase given across the board to all state employees or to increases occurring in an economic indicator, such as the consumer price index. Often a maximum cap is imposed upon any increase. Usually the automatic escalator provision is specified in a state's statutes, but in a few states, this mechanism exists as a matter of practice or has been instituted by action of a salary commission.

The second mechanism, used by four states, is longevity pay supplements provided to judges based on length of service on the bench.

The third mechanism involves giving greater control to salary commissions to set judges' salaries and, in some states, salaries for other officials as well. A number of states, including Hawaii, have advisory commissions to recommend salary levels for judges. In these states, the legislature is under no obligation to act upon these recommendations. However, in eight states, the commission's determinations carry greater weight, becoming law unless the legislature affirmatively acts to modify or reject them. In addition, in Washington State, the citizens' salary commission's determination becomes law without any input whatsoever from the legislature.

The various state statutory provisions concerning these mechanisms are discussed in the remainder of this chapter. It should be noted that a few states, such as Illinois, Maryland, and Nevada, may use more than one of these mechanisms, and thus, may be discussed in more than one section of this chapter.

AUTOMATIC ESCALATOR MECHANISMS

ALASKA

Judges' salaries in Alaska are tied to salary increases for state exempt classified employees. If the monthly basic salary for Step E, Range 28, of the salary schedule for classified and exempt state employees of the executive branch increases, the monthly base salary of judges will increase by the same percentage.⁶ In addition, compensation may be supplemented with a geographic cost-of-living adjustment depending upon the location of a judge's primary office assignment.⁷ The geographic cost-of-living adjustment is a variable percentage, depending upon location, that applies to the first \$40,000 of the yearly base salary of a justice of the supreme court or a judge of the superior or district court.⁸ Alaska also has tied judicial salaries to performance with a unique provision that conditions the issuance of a salary warrant to a judge upon the judge filing an affidavit with the state officer designated to issue salary warrants stating that no matter referred to the judge for opinion or decision has been uncompleted or undecided by the judge for a period of more than six months.⁹

CALIFORNIA

In California, the salaries of judges are increased every July 1, by an amount produced by multiplying the then existing salary of each judge by the average percentage salary increase for the current fiscal year for state employees. Any dollar limitation the legislature places on salary increases for state employees applies to judges in the same manner applicable to state employees in comparable wage categories.¹⁰

DISTRICT OF COLUMBIA

The compensation of the judges in the District of Columbia is tied to that of judges on the federal bench and thus increases automatically as federal judges receive pay increases based upon the Employment Cost Index (ECI), per the Ethics Reform Act of 1989.¹¹ The judges of the District of Columbia Court of Appeals are compensated at the same rate prescribed by law as judges of the United States courts of appeals, except that the chief judge receives an additional

⁶Alaska Stat. §22.05.140 (supreme court), §22.07.090 (court of appeals), §22.10.190 (superior court), and §22.15.220 (district court) (1996).

⁷See *id.*

⁸*Id.* at 22.35.010.

⁹*Id.* at §§22.05.140, 22.07.090, 22.10.190, and 22.15.220.

¹⁰Cal. Gov't Code §68203 (West 1997).

¹¹See 28 U.S.C. 461 (1994).

\$500 per annum.¹² Likewise, the judges of the superior court are compensated at the rate prescribed by law for judges of the United State district courts, with the chief judge receiving an additional \$500 per annum.¹³

ILLINOIS

The salaries of Illinois judges are tied to an automatic escalator by action of the Illinois Compensation Review Board, which, at least biennially, reviews the salaries of judges, elected constitutional officers of the state, members of the general assembly, and certain appointed officers of state government. In its May 1990 report to the legislature, the Compensation Review Board recommended that on July 1, 1991 and on July 1 of each year thereafter, the salary of each office or position provided for in the report or any subsequent reports of the Compensation Review Board, be increased by a percentage increase equivalent to that of the “Employment Cost Index; Wages and Salaries, By Occupation and Industry Groups: State and Local Government Workers: Public Administration”, as published by the Bureau of Labor Statistics of the United States Department of Labor, for the calendar year immediately preceding the year of the respective July 1st increase date. The increase under this provision is to be no less than zero and no greater than five percent.¹⁴ The Compensation Review Board’s report containing its recommendations with respect to salaries becomes law unless the Illinois General Assembly (legislature), within thirty days after session is convened, disapproves the report in whole or reduces it proportionately by a resolution, adopted by a record vote of the majority of the members elected in each house, directed to the Compensation Review Board.¹⁵ Thus far, the General Assembly has never disapproved the Compensation Review Board’s recommendation that judges automatically receive the cost of living adjustment given to state and local government workers. Additional information relating to the Compensation Review Board is presented in the last section of the chapter.¹⁶

KANSAS

In Kansas, increases in judges salaries are tied to those received by state classified civil service employees. If the rates of compensation of the pay plan for civil service employees are increased, the judicial salaries are increased by an amount (adjusted to the nearest dollar) computed by multiplying the average of the percentage increase in all monthly steps of the pay plan by the judges’ annual salaries in effect prior to the effective date of the increase.¹⁷ If increases are

¹²D.C. Code Ann. §11-703(b) (1995).

¹³Id. at §11-904.

¹⁴Telephone conversation with Elaine Legrande, Illinois Administrative Office of the Courts, Administrative Services, September 5, 1997. See also 5 ILCS §§290-3 through 290-3.3 (1996).

¹⁵25 ILCS at §120/5.

¹⁶See infra notes 54-56 and accompanying text.

¹⁷Kan. Stat. Ann. §75-3120(l)(a) (Supp. 1996). A similar provision recently has been enacted to increase the annual salary of the governor, lieutenant governor, the attorney general, the secretary of state, the state treasurer, and the commissioner of insurance. Id. at §75-3111(a).

authorized in the monthly rates of compensation from step movements of the pay plan, the judges' annual salaries are increased by an amount (adjusted to the nearest dollar) computed by multiplying the average percentage increase in the monthly rate of compensation from step movements on the pay plan by the judges' annual salaries in effect prior to the effective date of the increase.¹⁸ The secretary of administration may certify the percentage that equals the estimated average of the percentage increase in all monthly rates of compensation from step movements on the pay plan.

KENTUCKY

The Kentucky Revised Statutes state that the Kentucky General Assembly sets the salaries for judges in the judicial branch budget bill and may accept or modify the salaries recommended by the chief justice in the judicial branch budget recommendation.¹⁹ As a matter of practice, however, the General Assembly gives judges the same rate of percentage increase for cost of living given to all state employees as part of the budgeting process. The General Assembly sets the percentage cost of living increase and writes it into the biennial budget.²⁰

MAINE

Pursuant to law, annually on July 1, the state court administrator adjusts the salaries of all associate justices and judges by any percentage change in the consumer price index from January 1st to December 31st of the previous year, not to exceed a maximum increase of 4%. The chief justice or chief judge receives 105% of the salary of the other justices or judges.²¹ The legislature has amended this provision to withhold the cost of living adjustment in certain fiscal years. For example, no cost of living adjustment was made for fiscal years 1992-1993 through 1994-1995.²²

¹⁸**Id. at §75-3120(1)(b).**

¹⁹Ky. Rev. Stat. Ann. §48.195 (Baldwin 1995).

²⁰Telephone interview with Jennifer Chandler, Administrative Office of the Courts, September 4, 1999

²¹Me. Rev. Stat. Ann. tit. 4, §§4(2-A), 102(2-A), 157(4-A) (1989 & Supp. 1996). For purposes of provision, "consumer price index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, United States City Average, All items, 1967+ 100, as compiled by the United States Department of Labor, Bureau of Labor Statistics or if the index is revised or superseded, the consumer price index is the index represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar by co

²²**Id. at tit. 4, §4(2-A).**

MARYLAND

Maryland has both an automatic escalator provision and an affirmative judicial salary commission recommendation. Under the former provision, whenever a general salary increase is awarded to state employees, Maryland's judges receive the same percentage increase in salary as awarded to the lowest step of the highest salary grade for classified service employees in the Standard Pay Plan.²³ The Compensation Commission is discussed in the final section of this chapter.²⁴

MISSOURI

The salaries of Missouri's judges may be adjusted in any one year by an amount not to exceed the salary adjustment for the executive department contained in the pay plan applicable to other state employees at a similar salary level for the fiscal year. If no adjustment or a lower salary adjustment is granted in a particular year, then any salary adjustment granted the next fiscal year may exceed the salary adjustment of the executive department by the amount of the difference in the prior year.²⁵

NEW HAMPSHIRE

In New Hampshire, judges receive, as a matter of practice, the same percentage increase given to state employees. The legislature extends any negotiated agreement or legislatively granted salary increase for state employees to all legislative and judicial employees, including judges, by way of a footnote in the budget.²⁶

PENNSYLVANIA

Pursuant to statute, on January 1st of each year, the annual salaries of Pennsylvania's judges are increased by the percentage increase in the Consumer Price Index for Urban Workers for the immediately preceding twelve-month period. This cost of living adjustment provision, which began on January 1, 1994, is scheduled to sunset on January 1, 2001.²⁷

²³Md. Cts. & Jud. Pro. Code Ann. §1-703 (1995).

²⁴See infra notes 57-59 and accompanying text.

²⁵Mo. Ann. Stat. §476.405 (Vern. Supp. 1997). This statutory provision contains the limiting language "[w]ithin the limits of any appropriation made for this purpose"

²⁶Telephone interview with Jeff Smith, New Hampshire Administrative Office of the Courts, September 5, 1997.

²⁷42 Pa. Cons. Stat. Ann. § 3581(I) (Purdon Supp. 1997). The percentage increase must be published in the Pennsylvania Bulletin annually by the supreme court on or before November 30.

SOUTH DAKOTA

South Dakota law provides that the salaries of South Dakota's judges and various constitutional officers, including the governor, shall be adjusted annually "by the same rate appropriated as the across-the-Compensation Review Board increase to base salaries of state employees under the general appropriations Act in each corresponding year."²⁸

TENNESSEE

On July 1st of each year, the base salaries of Tennessee's judges are adjusted to reflect the percentage of change in the average consumer price index (all items-city average), as published by the United States Department of Labor, Bureau of Labor Statistics, between the two calendar years preceding July 1 of the year in which the adjustment is made.²⁹ However, no reduction in salary may be made by way of adjustment on account of any decrease in the average consumer price index. Furthermore, no yearly adjustment may exceed 5% per annum, unless the average consumer price index exceeds 10%. Under the latter circumstances, the adjustment is calculated at equal to 5%, plus 1% for each 1% or fraction thereof beyond the 10%.³⁰

LONGEVITY PAYMENTS

CONNECTICUT

Connecticut judges receive *semiannual* longevity payments as follows:

1. For ten or more years but less than fifteen years of service, one-quarter of three percent of the annual base pay;
2. For fifteen or more years but less than twenty years of service, one-half of three percent of the annual base pay;

²⁸S.D. Codified Laws §3-8-2.1 (1994).

²⁹Tenn. Code Ann. §8-23-103 (1993).

³⁰Id.

3. For twenty or more years but less than twenty-five years of service, three-quarters of three percent of the annual base pay;
4. For twenty-five or more years, three percent of the annual base pay.

The longevity payments are for service as a judge (not including a retired judge) at any level court or any combination of court or other state service or service as any elected officer of the state or any combination of such service.³¹

NEVADA

In addition to their annual base salary, Nevada judges receive longevity payments based upon years of service. District court judges (general jurisdiction court) who have served on the bench at least five years are entitled to an additional salary of 1% of their base salary for each year of service; provided that the additional salary may not exceed 22% of the base salary.³² Supreme court justices receive an additional 6% at 7 years on the bench and an additional 1% each year thereafter for a maximum of 22%.³³

NORTH CAROLINA

Pursuant to North Carolina law, the judges in North Carolina receive, in lieu of merit and other increment raises paid to regular state employees, longevity payments in an annual amount equal to:

1. 4.8% of the annual salary set forth in the Current Operations Appropriations Act payable monthly after 5 years of service;
2. 9.6% after 10 years of service;
3. 14.4% after 15 years of service; and
4. 19.2% after 20 years of service.³⁴

³¹Conn. Gen. Stat. §51-47(d) (Supp. 1997).

³²Nev. Rev. Stat. §3.030 (West 1997).

³³See NCSC Salary Survey, *supra* note 2, at 6.

³⁴N.C. Gen. Stat. §7A-10 (1995). The term “service” means service as a judge of any court of record, a member of the utilities commission, a district attorney, or a clerk of the superior court.

RHODE ISLAND

Rhode Island judges receive longevity payments of 5% after 5 years, 10% after 11 years, 15% after 15 years, 17.5% after 20 years, and 20% after 25 years.³⁵ Rhode Island also has an unclassified pay plan board that determines the salaries of judges and other officials. This is discussed in the last section of this chapter.³⁶

COMPENSATION COMMISSIONS

A number of states have compensation or salary commissions authorized by statute or constitution to evaluate and recommend salaries for state judges. The National Center for State Courts reports the following states have such commissions: Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Iowa, Maryland, Michigan, Minnesota, Oregon, Rhode Island, Utah, and Washington.³⁷ In addition to these, Maine and Nevada have commissions that review and recommend judicial salaries.³⁸ Similar to Hawaii's Judicial Salary Commission, many of these commissions are solely advisory in nature and are given little direction in carrying out their duties. However, a few like Maine are given statutory directives such as: to study the salary, benefits, and retirement to be paid to all judges and recommend a compensation structure that is adequate to ensure the most highly qualified lawyers in the State, drawn from diverse life and professional experiences, are not deterred from serving or continuing to serve in the state judiciary and are not demoralized while serving on the bench because compensation levels do not meet certain criteria.³⁹

In addition, Maine is one of the few states to specify criteria that the commission must consider in making salary recommendations. These include:

1. Skill and experience required of the particular judgeship.
2. Time required.
3. Opportunity for other earned income.

³⁵See NCSC Salary Survey, *supra* note 2, at 6.

³⁶See *infra* notes 66-69 and accompanying text.

³⁷National Center for State Courts, Information Services Memorandum No. S94.0547 (Judicial Compensation Commissions) (Williamsburg: March 15, 1994), at 1.

³⁸See Me. Rev. Stat. Ann. tit. 4, §1701(section establishing judicial compensation commission is repealed on December 31, 1999); Nev. Rev. Stat. §§281.157 - 281.1575(reviews compensation paid to constitutional officers, supreme court justices, district court judges, and elected county officers).

³⁹Me. Rev. Stat. Ann. tit. 4 §1710(11). See also *infra* notes 57 and 71, and accompanying text.

4. Value of compensable services performed by judges as determined by reference to judicial compensation in other states and the federal government.
5. Value of comparable services performed in the private sector, including private judging, arbitration, and mediation, based upon the responsibility and discretion required in the office and the demand for those services in the private sector.
6. The compensation of attorneys in the private sector.
7. The consumer price index and changes in that index.
8. Overall compensation presently received by public officials and employees; and
9. Other factors normally or traditionally taken into consideration in the determination of compensation.⁴⁰

In a handful of states, these commissions are more than mere advisory. In eight states, the recommendations of the compensation or salary commission becomes law, unless the state legislature affirmatively modifies or rejects the recommendation. In Washington state, the commission's recommendations become law without any action required by the legislature. The remainder of this section discusses the statutory provisions relating to these states' compensation or salary commissions.

ALABAMA

The Alabama Judicial Compensation is composed of five members: one appointed by the governor, one by the president of the senate, one by the speaker of the house, and two by the governing Compensation Review Board of the Alabama state bar. No member may hold any other public office or office in any political party or be eligible for appointment to the bench while a member of the commission and for two years thereafter.⁴¹ The Commission is charged with recommending to the legislature the salary and expense allowances to be paid from the state treasury for all judges of the state, except municipal and probate judges.⁴² The Alabama Code states that the Commission may submit a report to the legislature at any time within the first five calendar days of any session, and these recommendations become law upon the adjournment of the session in which submitted, unless rejected by a joint resolution or altered by act of the legislature during the session.⁴³ The legislature, relying upon this provision, routinely had accepted the

⁴⁰Me. Rev. Stat. Ann. at tit. 4 §1701(12). See also infra notes 55, 65, and 67 and accompanying text.

⁴¹Ala. Const. of 1901, Amend. No. 328.

⁴²Ala. Code §12-10-4 (1995).

⁴³Ala. Code §12-10-5; see also Ala. Const. of 1901, Amend. No. 328.

Commission's recommendations (which apparently tracked cost of living increases given to public employees) until a few years ago, when conflicting language was noted in a parallel provision in the Alabama State Constitution.⁴⁴ That language provides that the recommendations of the Commission become law *upon confirmation* by a joint resolution or the recommendations may be altered by the legislature during the session.⁴⁵ Since this discovery, the legislature has exercised greater discretion in this area, sometimes giving Alabama judges the cost of living salary increase received by public employees and sometimes not.⁴⁶

ARIZONA

Arizona has a Commission on Salaries for Elective State Officers, which biennially reviews the rates of pay of judges of all courts of record, clerks of the superior court, and elective state officers to determine the pay levels appropriate to the duties and responsibilities of the respective offices and positions.⁴⁷ The Commission is composed of five members appointed from private life as follows: two by the governor (one of whom is designated as chairperson); one by the president of the senate; one by the speaker of the house; and one by the chief justice of the supreme court.⁴⁸ Greater modification of the Arizona Commission's recommendations is possible than with other state salary commissions discussed herein. Unlike other commissions that submit their proposed salary recommendations directly to their state legislatures, the Arizona Commission submits its report and recommendations to the governor, who may then include his or her own recommendations on the exact rates of pay in the budget transmitted by the governor to the legislature. These recommendations take effect on the first Monday of January of the following calendar year, unless: specifically disapproved, in whole or in part, by *either* house of the legislature; or a statute is enacted that establishes rates of pay other than those proposed.⁴⁹

DELAWARE

The Delaware Compensation Commission is charged with studying and establishing the rate of remuneration for the: members of the general assembly; governor; members of the governor's cabinet; lieutenant governor; state auditor; state treasurer; attorney general; insurance

⁴⁴Telephone conversation with Rob Bradford, Alabama Administrative Office of the Courts, September 4, 1997.

⁴⁵Ala. Const. of 1901, Amend. No. 426 (Amendment to Amendment No. 328, Article VI, §6.09(d)).

⁴⁶Telephone conversation with Rob Bradford, Alabama Administrative Office of the Courts, September 4, 1997.

⁴⁷Ariz. Rev. Stat. Ann. §41-1903 (1991 & Supp. 1993).

⁴⁸Id. at §41-1902.

⁴⁹See id. at §41-1903 & 41-1904.

commissioner; justices of the supreme court; chancellor and vice-chancellors of the court of chancery and all judges of the superior court, court of common pleas, and family court; chief magistrate; justices of the peace; and public defender.⁵⁰ The Commission is composed of six members as follows: two are appointed by the governor; one by the president pro tempore of the senate; one by the speaker of the house of representatives; the fifth is the president of the Delaware Round Table; and the personnel director of the state serves as an ex officio and nonvoting member. The appointees may not be employed substantially full time by the state during their term.⁵¹ The Commission prepares a report every four years for submission to the Delaware General Assembly on the first day of session. The rate of remuneration established in the report for offices which salaries are more than \$25,000 are limited to 120% of the remuneration received in the fiscal year in which the report is submitted.⁵² The remuneration of all offices established by the Commission's report become law as of the first day of February following submission, unless the general assembly, by joint resolution, rejects the report in its entirety within thirty days following commencement of its session.⁵³

ILLINOIS

The Illinois Compensation Review Board reviews biennially the salaries of judges, elected constitutional officers of the state, members of the Illinois General Assembly, and certain officers of state government. The twelve members of the Compensation Review Board are appointed, three each, by the speaker of the house of representatives, the minority leader thereof, the president of the senate, and the minority leader thereof; provided that, no member may be an employee or member, or a former employee or member, of the judicial, legislative, or executive branches of state government or a registered lobbyist.⁵⁴ In determining the compensation for each officer, the Compensation Review Board is statutorily required to consider the following factors:

1. Skill required.
2. Time required.
3. Opportunity for other earned income.
4. Value of public services as performed in comparable states.

⁵⁰Del. Code Ann. tit. 29, §3303 (1987 & Supp. 1996). As used, remuneration includes salaries, emoluments, mileage, per diem, travel, and other expense allowances and reimbursements.

⁵¹*Id.* at tit. 29 §3301.

⁵²*Id.* at tit. 29, §3303.

⁵³*Id.* at tit. 29, §3304.

⁵⁴25 ILCS §120/2 (1996).

5. Value of such services as performed in the private sector in Illinois and in comparable states based upon the responsibility and discretion required of the office.
6. Average consumer prices, commonly known as the cost of living.
7. Overall compensation presently received by public officials and all other benefits received.
8. Interests and welfare of the public and the financial ability of the state to meet those costs.
9. Other factors normally or traditionally taken into consideration in the determination of compensation.⁵⁵

The Compensation Review Board is required to conduct public hearings prior to filing its report and must allow interested persons to present their views. The Compensation Review Board then submits its report containing its recommendations with respect to salaries, which become law unless the Illinois General Assembly, within thirty days after session is convened, disapproves the report in whole or reduces it proportionately by a resolution, adopted by a record vote of the majority of the members elected in each house.⁵⁶

MARYLAND

Maryland's Judicial Compensation Commission is directed to study and make recommendations with respect to all aspects of judicial compensation, including salary and pension, to the end that the compensation structure is "adequate to assure that highly qualified persons will be attracted to the bench and will continue to serve there without unreasonable economic hardship."⁵⁷ The Commission must review judicial salaries and pensions every two years and make recommendations at least every four years. The Commission's recommendations with respect to salaries are introduced as a joint resolution in each house of the Maryland General Assembly, not later than the fifteenth day of the session. The General Assembly may amend the joint resolution to decrease the amount, but may not increase it, except to comply with the law relating to automatic salary increases.⁵⁸ If the joint resolution is adopted or amended within fifty days after its introduction, the salaries so provided apply; however, if the General Assembly fails to adopt or amend it within this time period, the salaries recommended by the Commission apply. If the General Assembly rejects any or all of the Commissions' salary recommendations, the

⁵⁵Id. at §120/4.

⁵⁶Id. at §§120/4-120/5.

⁵⁷Md. Cts. and Jud. Pro. Code Ann. §1-708 (1995).

⁵⁸See supra note 23 and accompanying text.

salaries of the judges affected remain unchanged, unless modified by the automatic salary increase provision. The Commission's recommendations concerning pensions are introduced by the presiding officers of each house in the form of legislation, which becomes effective only if passed by both houses. In appointing commission members, special consideration is to be given to individuals who have knowledge of compensation practices and financial matters.⁵⁹

MICHIGAN

Michigan's State Officers' Compensation Commission determines the salaries and expense allowances of the justices of the supreme court, as well as that of the governor, lieutenant governor, and members of the legislature.⁶⁰ The Commission files its report each even numbered year, and its determination takes effect January 1 of the following year, unless the legislature, by concurrent resolution adopted by a two-thirds vote, rejects either the entire determination or specific determinations for specific positions.⁶¹ The salaries of judges serving on the court of appeals, circuit court, and district court are determined based upon a formula using a percentage of the salary of supreme court justices.⁶²

MINNESOTA

Although Minnesota's Compensation Council's recommendations are characterized as becoming law unless specifically modified or rejected by the state legislature, the exact statutory language indicates that Minnesota's model is somewhat weaker than other states' models. The Compensation Council is created each even-numbered year to establish the compensation of all judges, as well as constitutional officers, legislators, and the heads of certain state and metropolitan agencies.⁶³ The Council must submit its recommendations by May 1, of each odd-numbered year, with the recommended salaries scheduled to take effect on the first Monday in January of the next odd-numbered year after that, with no more than one adjustment scheduled to take effect on January 1 of the following year. However, the recommendations become law only if an appropriation of money to pay the recommended salaries is enacted after the recommendations are submitted and before their effective date. Furthermore, the statute allows the recommendations to

⁵⁹Md. Cts. and Jud. Pro. Code Ann. §1-708 (1995).

⁶⁰Mich. Stat. Ann. §3.255(56) (1996).

⁶¹*Id.* §3.255(57). The legislature must adopt the resolution prior to February 1, of the year following the filing of the determination. In the case of rejection, the existing salary and expense allowances prevail retroactive to January 1.

⁶²*See id.* at §§27A.304, 27A.555, and 27A.8202.

⁶³Minn. Stat. Ann. §15A.082(1) (1988 & Supp. 1997).

be expressly modified or rejected.⁶⁴ The statute is silent as to how the modification or rejection may occur, but as there is no requirement such action be taken jointly, it presumably may be done by either house and approved by the other. In making its compensation recommendations, the Council is directed by statute to consider the following factors: the amount of compensation paid in government service and the private sector to persons with similar qualifications; the amount of compensation needed to attract and retain experienced and competent persons; and the ability of the state to pay the recommended compensation.⁶⁵

RHODE ISLAND

Rhode Island law provides for a form of salary commission to determine the salaries of judges, directors of all state departments, and judges of the workers' compensation court. The Unclassified Pay Plan Board is a permanent government agency, consisting of seven members, whose duties are to establish a pay plan for the unclassified employees of the state and to allocate all new unclassified positions to existing grades within the plan.⁶⁶ The Unclassified Pay Plan Board meets each January to determine salaries for the following year. In determining these salaries, the Board is directed to take into consideration: the duties and responsibilities of the positions; related factors such as salaries paid to executive and judicial positions in other states and levels of government and in comparable positions anywhere that require similar skills, experience, or training; the amounts of salary adjustments made for other state employees during the period in which the pay for directors, judges, and workers' compensation judges was set last.⁶⁷ The Board must refer the proposed salaries to the Rhode Island General Assembly by the last day of each February. The proposed salaries go into effect thirty days hence, unless within that time, the house and senate, acting concurrently, formally reject the proposed salaries.⁶⁸ According to the National Center for State Courts, under this procedure, judges have received at least the same percentage of flat increases negotiated or given to state employees generally, although an increase given to unionized employees in 1990 was postponed for judges until 1991 when no additional increase was scheduled.⁶⁹

⁶⁴**Id. at §15A.082(3).**

⁶⁵**Id. at §15A.082(4).**

⁶⁶R.I. Gen. Laws §§36-4-16 & 36-4-16.2 (1990 & Supp. 1996). The Board composition is as follows: two members are appointed from the house of representatives by the speaker; two are appointed from the senate by the majority leader; the director of administration; the state court administrator; and the general treasurer.

⁶⁷**Id. at §36-4-16.4(a).**

⁶⁸**Id. at §36-4-16.4(d).**

⁶⁹National Center for State Courts, Information Services Memorandum No. S95.2152 (states' responses to the question: "Are salaries of any judges tied to any **automatic increases (such as cost of living) or to state government official?**") (Williamsburg: March 7, 1996), at 25.

WASHINGTON

The salaries of Washington's judges, as well as all of its elected officials of the executive branch and members of the legislature, are set biennially by the Citizens' Commission on Salaries for Elected Officials by an affirmative vote of not less than nine out of the sixteen members.⁷⁰ In setting the salaries for these positions, the Citizens' Commission is charged with studying the relationship of salaries to the respective duties involved.⁷¹ The Citizens' Commission is required to hold no fewer than four public hearings within four months immediately preceding the filing of its schedule of salaries with the secretary of state no later than the first Monday of June every odd-numbered year. Each schedule is then filed in legislative bill form, assigned a chapter number, published with the session laws, and codified by the statute law committee. The schedules becomes effective ninety days after the filing, without requiring action by the legislature.⁷²

Interestingly to note, Washington is one of the few states to impose any type of qualifications on the Citizens' Commission members. Seven of sixteen members must have experience in the field of personnel management. Of these, five are selected jointly by the speaker of the house of representatives and the president of the senate, with one from each of the following five sectors in the state: private institutions of higher education; business; professional personnel management; legal profession; and organized labor. Of the remaining two of these seven, one is recommended by the chair of the Washington personnel resources Compensation Review Board and one is recommended by a vote of the presidents of the state's four-year institutions of higher education.⁷³

⁷⁰Wash. Rev. Code §43.03.310 (1996).

⁷¹Id.

⁷²Id. at §43.03.310.

⁷³Id. at §43.03.305.

Chapter 4

CONSIDERATIONS INVOLVED IN DEVELOPING A FAIR AND REASONABLE COMPENSATION STRUCTURE FOR JUDGES

The Impact of Inadequate Compensation

Conventional wisdom holds that, while inadequate judicial compensation substantially impacts the quality of justice by forcing experienced judges to quit the bench in search of better pay, fair and reasonable pay encourages judges to remain on the bench from which, as experienced judges, they dispense a higher caliber of justice. Critics of the inadequate level of judicial pay in Hawaii suggest that the situation here is proving the conventional wisdom correct. Since 1992, nine experienced, seasoned judges in Hawaii have left the bench at an average age of 48.4 years old, far below the mandatory retirement age. Another judge has just recently announced his intent to retire at the end of May 1998. Chief Justice Ronald Moon, in his first State of the Judiciary address to the Legislature during the Regular Session of 1997, acknowledged the link between adequate pay, experienced judges, and the quality of justice and expressed deep concern over the adverse effect that the continuing loss of experienced and seasoned judges was having on the Judiciary, and ultimately the public:

. . . Lawyers who are appointed to judicial office soon realize that lawyering and judging are entirely different. Although knowledge of the law is certainly basic to both, the skills, techniques, and advocacy style of a successful lawyer do not necessarily make a good judge. Just as lawyers gain proficiency through their practice of law [by] handling numerous cases over many years, judges learn the art of judging through the many cases that they handle on a daily basis.

When we lose judges after much time, effort, and monies have been spent to raise their level of expertise and productivity — not because they are ready to retire but because of a lack of a salary increase — judicial excellence, as a whole, declines and service to the public is adversely affected.

Although the honor of public service substitutes, in part, for the monetary rewards of private practice, it will become increasingly more difficult to attract and retain quality jurists without a fair increase in judicial salaries.¹

Chief Justice Moon's words echo those of the Iowa Commission to Review Judicial Compensation and Benefits, in cautioning that inadequate pay was driving experienced judges from the bench and thus posing a threat to the quality of justice:

¹Chief Justice Ronald Moon, State of the Judiciary Address, January 22, 1997, at 9-10.

It is difficult to assess the real cost of replacing a highly qualified and experienced judge who resigns at the pinnacle of his (or her) career, but the implications for the judicial system are several. It takes years for a qualified attorney, once appointed the bench, to reach a peak efficiency. Early departure creates a gap in the system which, at best, cannot be filled for a period of years, and, at worst, may result in a permanent diminution in the capabilities of the service.²

The literature is replete with ratiocination concerning the intrinsic relationship between quality, experience, and adequate compensation on the bench. This statement by the American Judicature Society, whose goal is effective administration of justice at the state and federal levels, is illustrative of the conventional thinking on the correlation between reasonable compensation and judicial excellence:

No precept to the American justice system is more fundamental than the need for excellence in the judicial officers who preside over the system. Without excellence, judges lose the aura of neutrality and independence that is central to their role as ultimate arbiters....[W]ithout adequate compensation — including salary as well as retirement, health, and other benefits — the quality of the applicant pool can be diminished.... To draw the brightest minds into the applicant pool, compensation must be offered that, if not quite competitive with the private sector, is at least adequate to permit such people to enter judicial service without significant financial sacrifice.³

Critics of inadequate judicial compensation contend that low salaries not only are responsible for experienced judges quitting the bench, but also discourage the more competent, highly qualified attorneys from leaving their well-paid positions to seek judicial careers.⁴ The clear implication is that, as a consequence of low pay, judicial vacancies are being filled by less qualified, and therefore less desirable, candidates.⁵ In December 1986, the United States Commission on Executive, Legislative, and Judicial Salaries expressed such a concern, while warning of the ramifications of inadequate judicial compensation: “As new recruitment at inadequate salaries threatens to bring less qualified men and women to the bench, the real cost

²See Edward B. McConnell, “State Judicial Salaries: A National Perspective,” 61 *Journal of State Government* 179, 180 (Sept./Oct. 1988) [hereinafter cited as McConnell], quoting from the *Report of the Iowa Commission to Review Judicial Compensation and Benefits*, March 1978.

³Hawaii Judicial Salary Commission, *Report on Judicial Salaries* (Honolulu: October 1996), at 7 [hereinafter cited as 1996 Hawaii Salary Commission Report], quoting from American Judicature Society, July-August, 1994.

⁴See e.g., State of New York, Temporary State Commission on Judicial Compensation: Final Report, January 1993, at 2; Flaherty, “Judges Are Militant, Bitter Over Pay,” 21 *Court Review* 5, 10 (Summer 1984).

⁵McConnell, *supra* note 2, at 180. McConnell contends that the public at large is the loser as “good judges leave the bench and qualified lawyers refuse to make the economic sacrifice required to take their place.” On the issue of appointing qualified judges to the bench, he further quotes an adviser to the governor in an unidentified state as frankly stating: “We’re getting a lot of duds. We’re not getting the level of quality we want in candidates, and salary is the reason.” *Id.*

cannot be calculated in dollars. The real cost will be in the insidious and long-term drain imposed on the nation's judicial system"⁶ The American Bar Association also claimed that low judicial salaries for judges "diminish the dignity of the office and engender low public esteem for the courts."⁷

Edward B. McConnell, the widely respected president emeritus of the National Center for State Courts, has written of the association between judicial pay, experience on the bench, and judicial excellence:

To have good judges, a state must be able to get good lawyers to leave the practice of law and go on the bench, and must keep good judges from leaving the bench to return to the practice of law. To do this, judicial salaries need not equal, but must have a reasonable relationship to the compensation of the more competent and experienced practicing attorneys from whose ranks judges should come, and to whose ranks they can return. It is axiomatic in business that you get what you pay for. Because of this correlation between quality and compensation, a state cannot expect to attract and retain good judges and thereby maintain a quality court system at compensation levels that are comparable to those of the less experienced or less competent lawyers.⁸

Despite the weight of commentary concerning the deleterious effects of inadequate compensation on the quality of justice, some may reasonably question whether higher pay in fact guarantees better qualified judges. Can the conventional wisdom be substantiated by empirical evidence or scientific method or only by subjective or anecdotal accounts? While such a direct connection may not lend itself to scientific verification, reform efforts over the last several decades, such as judicial merit selection, judicial retention, and judicial performance evaluation, have been aimed at ensuring that only qualified individuals are appointed to and retained on the bench.

Judicial performance evaluation programs, in particular, have provided the judiciary, retention commissions, and, in many cases, the public with meaningful information concerning judicial performance factors, such as knowledge and application of the law, treatment of parties and counsel, case management, and communication and administrative skills.⁹ The concept of judicial performance evaluation was pioneered by the Alaska Judicial Council in 1976 to provide reliable information to voters to assist them in making informed decisions in judicial retention elections.¹⁰ As of 1993, eleven states, including Hawaii, had established permanent judicial performance evaluation programs and another ten states were in the process of developing such

⁶See *id.*

⁷American Bar Association, Judicial Administration Division, "Standards for Judicial Compensation" (Chicago, 1990), at I.

⁸McConnell, *supra* note 2, at 180.

⁹See Susan Keilitz & Judith White McBride, "Judicial Performance Evaluation Comes of Age," *State Court Journal* 4-13, Winter 1992, at 4.

¹⁰*Id.*

programs.¹¹ The goal of judicial performance evaluation programs is to provide fair, responsible, and constructive information about judicial performance, which may be used to: improve judicial performance individually and institutionally; enhance the judicial reappointment or retention process; enrich judicial education; and promote more effective assignment of judges.¹² Although scientific measurement of the impact of these programs on performance is admittedly “inherently complex”; nevertheless, researchers have found a “growing body of evidence [that] validates the value of the process for individual judges and for the judicial system as a whole.”¹³

Hawaii’s Judicial Performance Program, which has been in existence for about three and one-half years, is designed to evaluate and improve performance on an individual and institutional level.¹⁴ Judges are evaluated by attorneys who appear before them. The evaluation covers three primary areas: legal ability, judicial management skills, and comportment. Each judge is evaluated twice during the judge’s term. Survey results are compiled and given to the Chief Justice, who meets with the judges individually and reviews the results with them. The evaluation results are confidential under the rationale that the goal of the program is to encourage self-improvement. However, the results are given to the Judicial Selection Commission to assist the Commission in its evaluation and retention process. In addition, the results have been used by the Judiciary to help focus the judicial education program on specific areas that need work.¹⁵

Is Inadequate Compensation a Menace to Judicial Independence?

McConnell advised that “[j]udicial compensation should be sufficient to ensure that judges are of high-caliber, free from the distractions of personal economic pressures, and independent of

¹¹ States with established judicial performance evaluation programs: Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Maryland, New Hampshire, New Jersey, and Utah. States in the process (as of 1993) of developing their programs: Delaware, Massachusetts, Minnesota, Missouri, New Mexico, North Dakota, Rhode Island, South Carolina, Vermont, and Washington. See National Center for State Courts, 1993 State Court Organization (Williamsburg: 1995), at Table 11.

¹² See generally Susan Keilitz & Judith White McBride, “Judicial Performance Evaluation Comes of Age,” State Court Journal 4-13, Winter 1992. Methods used to assess and evaluate performance include: questionnaires; self assessment; peer evaluation; direct, in court observation; and videotaping.

¹³ Id. at 13.

¹⁴ The program, which started as a pilot program, was made permanent at the end of August of 1993. Judicial performance is evaluated through the use of questionnaires sent to attorneys, pro se litigants, and guardians ad litem who appear before judges. The Bar’s response rate reportedly has been very positive. See “Judiciary Report,” Hawaii Bar Journal (November 1994), at 27-28.

¹⁵ Discussions with Chief Justice Ronald Moon, Administration Director of the Courts Michael Broderick, and Budget and Statistics Division Administrator Larry Coldiron, July 14, 1997.

outside influences.”¹⁶ This statement recognizes that the pay issue extends beyond the connection between compensation and judicial excellence, striking at the very heart of judicial independence. The Iowa Commission to Review Judicial Compensation and Benefits also perceived the critical significance of these issues with respect to judicial independence:

An independent and highly competent judiciary is the life blood of the democratic process

The citizens of Iowa rightfully expect competence and high standards from their judges. Public acceptance of judicial decisions rests primarily on the reputation of judges for independence, scholarship and integrity. The Code of Judicial Conduct makes judges almost completely reliant upon judicial salaries of earned income Fundamental fairness requires fair and just compensation for this responsible position.¹⁷

The American Bar Association, in adopting its standards for judicial compensation in 1990, minced no words in warning of the inimical effects of inadequate judicial compensation: “While some financial sacrifice is expected of private citizens who assume major governmental posts, there is a threshold below which subpart compensation poses a very real threat to the independence and quality of the judiciary.”

The danger posed by inadequate compensation to the judiciary’s independence is real indeed. The principle of judicial independence¹⁸ derives from the doctrine of separation of powers, which is fundamental to the very existence of our democratic government.¹⁹ Flowing from the doctrine of separation of powers is the independence of each branch of government to carry out its constitutional functions. In so doing, each branch has “exclusive cognizance of the matters within its jurisdiction, and is supreme within its own sphere,” and may not invade another’s sphere of operation.²⁰ Thus, absent specific constitutional authority, one branch of government may not be controlled by, subjected either directly or indirectly to the coercive

¹⁶McConnell, supra note 2, at 180.

¹⁷McConnell, supra note 2, at 179-180, quoting from Report of the Iowa Commission to Review Judicial Compensation and Benefits, March 1987.

¹⁸According to Flaherty, the principle of judicial independence dates back to the American Declaration of Independence, which contains this major grievance against King George III of England: “He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.” See e.g., Flaherty, “Judges Are Militant, Bitter Over Pay,” 21 Court Review 5, 10 (Summer 1984) [hereinafter cited as Flaherty].

¹⁹It has been said that the separation of powers doctrine is the “most important principle of government[,] declaring and guaranteeing the liberties of the people, and preventing the exercise if autocratic power, and ... is a matter of fundamental necessity, ... essential to the maintenance of a republican form of government. ... [N]o maxim has been more universally received and cherished as a vital principle of freedom.” 16 Am Jur 2d Constitutional Law §296 (1979 & Supp. 1997) (footnotes omitted). The doctrine has been explained as the distribution of the powers of government to the legislative, executive, and judicial branches, which operates, by implication, as an inhibition against the imposition, upon any one branch of government, of the powers that belong to one of the other branches, so that no branch may rightfully exercise any of the functions necessarily belonging to another. Id.

²⁰Id. (footnotes omitted).

influences of, or even embarrassed by another branch of government.²¹ It may be arguable that the failure of the legislative or executive branch to provide fair and reasonable judicial compensation is an indirect attempt to control, influence, or embarrass the judiciary and, as such, constitutes a menace to judicial independence.

Determining Fair and Reasonable Compensation

Salary comparisons

Although it may be easy to conclude that judges should be paid an adequate salary, it is not so simple to determine what constitutes a fair and reasonable level of compensation. The American Bar Association, Judicial Administration Division's Handbook on State Judicial Salaries, has suggested the following factors as relevant in determining the appropriate level for judicial salaries:

- Income of private attorneys;
- Compensation of top attorneys in public service, including the attorney general's staff, county, city, and district attorneys, and state law school deans and professors;
- Compensation of federal judges and state judges elsewhere, particularly those of comparable and surrounding states; and
- An adequate judicial pension system, including retirement, disability, and survivor benefits.²²

The Maryland Judicial Compensation Commission has identified a broader range of compensation principles or guidelines as relevant to determining appropriate judicial compensation:

- Salary comparability with other state officials and jurists in other states;
- Comparability with private lawyer income;
- Achievement of an appealing career ladder for jurists, commencing with an attractive entry salary;
- Recognition of upward trends in and responsiveness to economic indicators, such as cost of living and per capita income;
- Recognition of risks inherent in the work and in competitive elections;

²¹*Id.*, citing *O'Donoghue v. United States*, 289 U.S. 516 (1932); *State v. Shumaker*, 200 Ind. 716, 164 N.E. 408 (1928).

²²See McConnell, *supra* note 2, at 181-182.

- Urgency to recruit highly qualified persons for the bench;
- Retention of competent jurists; and
- Recognition of the status and prestige of the bench.²³

As may be seen from these examples, there is a tendency to measure reasonable salary levels through salary comparisons. However, there appears to be no one agreed upon standard by which to compare judicial salaries.²⁴ Many commentators urge that the most appropriate measure should be what a judge could earn in private practice.²⁵ In particular, they contend that judicial salaries should be compared with private attorneys who are in the top quarter level of income, based upon the reasoning that judges generally come from among the most experienced and able attorneys.²⁶ Others, however, have rejected this notion, including the New York Temporary Commission on Judicial Compensation, which observed that “public service, particularly in higher office[,] has always entailed sacrifice relative to the private sector.”²⁷

In practice, it appears that states tend to give significant weight to the salaries of judges at similar court levels in other jurisdictions. Some commentators have urged parity between the compensation of state court judges and that of federal court judges. This view is supported by an ABA resolution calling for substantial parity between the salaries of justices of the highest courts of the states and those of judges of the United States courts of appeal, and between salaries of state general jurisdiction trial court judges and those of federal district court judges. Supporters of this view cite, as rationale for such parity, the comparable levels of training, skill, and experience required and comparability of the number and complexity of cases handled.²⁸ Few states have adopted parity with the federal courts as a goal, however. Moreover, the New York Temporary State Commission on Judicial Compensation found that the latest increase in salaries for federal judges made parity an “unrealistic and unachievable” goal, declaring that the ability of the federal government to pay and incur debt is “fundamentally different from New York’s constitutionally-

²³Maryland, 1986 Report of the Judicial Compensation Commission (Annapolis: 1986), at 7.

²⁴Commentators appear to be in general agreement that the focus of such comparisons should be determining an appropriate salary for judges. Thus, while judges' incomes are admittedly high in comparison to that of an average wage earner, this type of comparison is irrelevant.

²⁵See Flaherty, supra note 18, at 6; McConnell, supra note 2, at 181.

²⁶See id.

²⁷State of New York, Temporary State Commission on Judicial Compensation: Final Report, January 1993, at 8.

²⁸1996 Hawaii Salary Commission Report, supra note 3, at 12, citing American Bar Association, Annual Report of the American Bar Association, Including Proceedings of the One Hundred Fourth Annual Meeting, New Orleans, Louisiana, August 10-12, 1981, vol. 106 (Chicago: American Bar Association, 1985) at 687.

imposed requirement for a balanced budget.”²⁹ Similarly, the Maryland Judicial Compensation Commission, while admitting that federal-state parity might be desirable but for existing state fiscal constraints that are absent in the federal system, noted that “the federal government runs on deficit financing and the State of Maryland does not.”³⁰ Thus, the greater tendency among states has been to compare salaries with those of other state court judges, particularly in neighboring or comparable states.³¹

Commentators also draw comparisons between judicial salaries and those of law school faculty, frequently citing instances in which professors in state law schools are paid more than the state chief justice. Critics of this situation pointed out that the position of chief justice requires legal skill and ability at least equal to, and requires administrative responsibilities far greater than, those of a law school dean.³²

Historically, there has been a tendency to link judicial pay with that of top government officials in the executive branch.³³ This policy has been criticized as inappropriate because of the distinct nature and function of the judiciary. This view was summarized by the Utah Committee on Judicial Compensation in its October 1987 report:

The judiciary provides a unique and critical function. Consequently, issues to be considered when making judicial compensation decisions are different in many ways from those impacting salaries of other elected/appointed officials or career service employees.

- The Judiciary -comprises the third branch of government. Its strengths, quality and independence must be ensured. The need for adequate salaries to attract and retain quality individuals to the bench should not be limited by tying salaries to unrelated positions elsewhere in state government.

- Almost all judges become career employees. Salaries should support and encourage career decisions,

...

²⁹State of New York, Temporary State Commission on Judicial Compensation: Final Report, January 1993, at 8.

³⁰Maryland, 1986 Report of the Judicial Compensation Commission (Annapolis: 1986), at 9.

³¹See McConnell, supra note 2, at 182.

³²Id. at 181.

³³The tendency in Hawaii to tie judicial pay raises together with those of the executive branch has had some bizarre results, such as when the justices of the Hawaii supreme court had to uphold the 1975 executive and judicial pay raise which was being challenged on several grounds, including that it had been attached to a bill appropriating funds for collective bargaining. See “75 raise upheld by top Isle court,” The Honolulu Advertiser, May 13, 1977, at A-10. See also notes 10-14 in Chapter 2 and accompanying text.

It is critical that compensation levels reflect these unique characteristics. Compensation policies and activities for other positions should not determine the establishment and maintenance of adequate salary (sic) for judges.³⁴

In a similar vein, Chief Justice Moon, in his 1996 State of the Judiciary address, elaborated on the distinction between the Judiciary and the other branches of government:

Judicial independence, as it relates to judges, means that our decisions must be based solely on the legal merits of a case — not on popular opinion polls or surveys, or views of special interest groups. In the words of United States Supreme Court Chief Justice Rehnquist, judicial independence is “one of the crown jewels of our system of government today . . . and is essential to [the Judiciary's] proper functioning and must be retained [M]embers of the legislative branch and the heads of the executive branch of government . . . are, under our system of government, guided by popular opinion and are expected to carry out the will of the people. On the other hand, judges are prohibited from having constituents or from engaging in politics because our decisions must be based solely on the legal merits of a case. And therein lies the crucial distinction between judges and representatives of the legislative and executive branches.³⁵

The 1984 Hawaii Commission on Judicial Salaries, noting that judges make a lifetime commitment to the bench in the “tradition of an independent judiciary,” likewise distinguished service on the bench from other public service positions:

[I]t is essential to remember that appointments to the courts are unlike election to public office, appointment of senior positions in State government [J]udges are expected to devote full energy and attention to the cause of justice, to eliminate personal, professional or economic interest that could conflict with the exercise of independent and dispassionate judgment in criminal and civil cases.³⁶

Some commentators have further noted that, whereas public officials typically make only a short-term commitment to public service, after which they return to the private sector to capitalize on their governmental experience, attorneys who leave their practice for public service on the bench generally are expected to do so permanently.³⁷ Thus, the financial sacrifice judges make in public service is both significant and enduring.

³⁴McConnell, supra note 2, at 181-182, quoting from the October 1987 Report of the Utah Committee on Judicial Compensation.

³⁵Chief Justice Ronald Moon, “State of the Judiciary Address”, January 22, 1997, at 3.

³⁶Hawaii, Report of the Advisory Committee on Judicial Salaries (Honolulu: 1989), at 3.

³⁷See Maryland, 1986 Report of the Maryland Judicial Compensation Commission (Annapolis: 1886), at 8.

What should comparisons include?

“Perks”. With respect to imposing a ceiling on judicial salaries at the pay level of elected or appointed officials, it has been pointed out that many such officials have perks in addition to their salary. For example, it was estimated in 1989 that Governor Waihee received approximately \$290,000 in added benefits per year, including an official mansion, servants, limousines, free food, and household expenses.³⁸ Commentators maintain that any linkage of judicial salary levels to those of elected or appointed officials, in the absence of consideration of the value of such perks, is arbitrary and unfair. Accordingly, it is submitted that any comparison of judicial compensation with that of other state officials should take into account whether the officials receive other perquisites, such as housing, transportation, personal staff, expense accounts, and other extras.

Ability to earn outside income. Similarly, commentators have suggested that, in addition to the inclusion of “perks,” a fair comparison of judicial compensation with that of others should include the ability to earn outside income.³⁹ These commentators explain that many others with whose salaries judicial salaries frequently are compared are free to supplement their income. For example, practicing attorneys may earn extra income by teaching a law school course or other class or by undertaking writing or speaking commitments. Likewise, law school faculty members, including deans, are permitted to supplement their salaries by practicing law or engaging in other professional work, consulting, and teaching summer school courses. In contrast, judges are constrained by the Code of Judicial Conduct from earning income outside their judicial salaries.⁴⁰ Commentators contend that this constraint from earning outside income, coupled with low pay, puts judges at a distinct disadvantage compared to those in the private sector.

Fringe benefits. Furthermore, it has been suggested that comparisons of judicial compensation with the compensation of others, regardless of whether attorneys in private practice, other state officials, or judges in other jurisdictions, should be between total compensation packages. Although salary is the most significant form of compensation judges receive, other forms of compensation may include: retirement, disability, and death benefits; leave for vacations, holidays, and sickness; and various forms of insurance coverage.

³⁸Richard Borreca, Governor’s commission proposes hefty pay hikes,” Honolulu Star Bulletin, March 3, 1989. In addition, a spokesman for the attorney general’s office estimated that security costs, travel expenses, and landscaping at Washington Place costs \$250,000. Id.

³⁹See McConnell, supra, note 2, at 181. McConnell also quotes the Iowa Commission to Review Judicial Compensation and Benefits on this point: “The Code of Judicial Conduct makes judges almost completely reliant upon judicial salaries for earned income. Judges are required to sacrifice most all sources of earned income, except isolated instances of teaching and writing which do no impinge upon their judicial duties. Fundamental fairness requires fair and just compensation” Id. at 180.

⁴⁰See Haw. Rev. Code of Jud. Conduct Canon 4 (1992). In Hawaii, the Judiciary’s policy of prohibiting judges from serving as paid adjunct law professors is based upon Article VI, §3 of the Hawaii Constitution. See Memorandum from Chief Justice Moon to Administrative Judges and Dean Jeremy Harrison, May 11, 1993.

In Hawaii, these fringe benefits account for a significant percentage of a judge's compensation. An exact figure of the value of fringe benefits as a percentage of compensation is difficult to determine, according to staff at the Department of Human Resources Development, because the figures change depending upon which benefits are included.⁴¹ For example, the Department of Budget and Finance recently calculated a composite fringe benefit rate, generally applicable to all state employees, at 36.97% of employees' base salaries.⁴² However, this figure includes computed rates only for the following fringe benefit items: pension accumulation and administration retiree health insurance, employees health fund, workers' compensation, unemployment compensation, and social security. (See **Appendix E**) Several important benefits, including holidays, sick leave, and vacation, were excluded from this figure. Accordingly, it seems logical to conclude that the value of all fringe benefits received by Hawaii's judges would result in a somewhat higher figure.

Given the significant percentage of compensation that fringe benefits comprise, commentators maintain that a fair and meaningful comparison of Hawaii's judicial compensation levels with the compensation of others requires comparison between total compensation packages. For example, any comparison of judicial compensation with that of attorneys in private practice should take into account whether the attorneys' compensation package includes benefits such as health, life, and disability insurance and pension or profit sharing plans or whether attorneys must provide for such benefits out of their gross professional income. Similarly, any comparison of Hawaii's judicial compensation with that of other states should consider all benefits provided to judges, in addition to salary. It should be noted that, although much has been made of Hawaii's low judicial salary ranking vis a vis the other states, discussed previously in Chapter 3, this ranking is based solely on salary levels and does not take into account other aspects of judicial compensation, which may differ substantially from state to state.

A comprehensive review and comparison of state judicial compensation packages would require the competent services of a compensation/benefits specialist. Although such a task is clearly beyond the scope and time requirements for the present study, it is important to comprehend just how varied the fringe benefit provisions for judges are among the states. The following discussion is merely an attempt to illustrate the diversity that exists and to highlight a few notable provisions. It is not intended to be a complete discussion of all benefit provisions available in a particular state nor a complete summary of how all states treat a particular benefit. The information is taken from the ABA's 1996 survey of state fringe benefits report, which summarizes benefit provisions by state and may be referred to for further information.⁴³ No attempt has been made to verify or update the information contained therein.

⁴¹Telephone conversation with Allen Sakamoto, Compensation Specialist, Classification and Compensation Review Division, Department of Human Resources Development (October 1, 1997).

⁴²Memorandum from Earl I. Anzai, Director of Finance, to All Department Heads, Re Fringe Benefit Rate for FY 98, July 1, 1997.

⁴³American Bar Association, National Conference of State Trial Judges, A Survey of State Judicial Fringe Benefits (2 ed.; Chicago: 1996).

a. *Retirement/Vesting periods*

With respect to judicial pensions, the American Bar Association, Judicial Administration Division's Committee on State Judicial Salaries' noted that judges who are at least age 65, with a minimum of 15 years of service, should be eligible to receive a pension equal to 75% of the currently effective salary of the office from which the judge retired. Reference to the "currently effective salary" was an attempt to ensure provision of cost-of-living adjustments.⁴⁴ In Hawaii, judges contribute 7.8% of their salary to the Employees' Retirement System. Their retirement benefits are equal to 3.5% of a judge's average final salary (based on the average of the highest three years), multiplied by the number of years of service, plus an annuity equal to the actuarial equivalent of a judge's accumulated contributions to the retirement system, not to exceed a maximum of 75% of the judge's average final compensation. Retired judges also receive an annual 2.5% cost of living increase in retirement benefits and federal social security benefits and do not pay state income taxes on their retirement benefits when they are received. Provisions also exist for judges to elect early retirement with reduced benefits.

Governor Cayetano's veto message accompanying the judicial pay bill,⁴⁵ warned that "[i]ncreasing [judicial] salaries across the board without adjusting retirement benefits . . . will only provide [judges] with a greater incentive to leave" the bench.⁴⁶ The Governor seemed particularly concerned with the Judiciary's right to benefits based upon three and a half percent of the average final salary, based upon the average of the highest three years, and the "right to retire without consideration of an age limit."⁴⁷ Given Governor Cayetano's rationale for vetoing the judicial pay bill, a review of Hawaii's retirement benefits vis a vis other states might prove particularly enlightening.

However, as most states' provisions are unique, meaningful comparison of these provisions are problematic in the absence of the services of a benefits specialist. For example:

- In Alabama, judges contribute 6% of their annual salary and receive 75% of their salary at date of retirement plus cost-of-living increases;
- In Arizona, judges contribute 6% of their salary, and the benefit equals 3.3% of final salary, multiplied by years of service to a maximum of 80% of final salary. Cost-of-living increases are granted from time to time;

⁴⁴See McConnell, *supra* note 2, at 182.

⁴⁵See note 56, in Chapter 2 and accompanying text.

⁴⁶Benjamin J. Cayetano, Governor of Hawaii, Statement of Objections to House Bill No. 1393, Regular Session of 1997 (June 20, 1997).

⁴⁷*Id.*

- In Colorado, judges contribute 8% of their annual salary, and benefits are equal to 2.5% of final average salary (high three), multiplied by years of service up to 20 years. After 20 years, judges receive an additional 1% of their final average salary for each year in excess of 20, up to a maximum of 70% of final average salary. Benefits are subject to an annual cost-of-living increase up to 1% per year, but retired judges must pay state income taxes on benefits when received;
- In Idaho, judges contribute 6% of their annual salary, but after 20 years of service, make no contribution. Benefits equal 4% of current salary, multiplied by number of years of service up to 10 years, plus 2.5% of current salary for service in excess of 10 years, up to maximum of 62.5% of salary. Retired judges pay state income taxes on benefits when received;
- In Illinois, judges contribute 7.5% of their annual salary, plus 1% toward an automatic increase in annuity. Benefits are equal to 3.5% of salary base for the first 10 years of service, plus 5% of the base for each year after that, up to a maximum of 85%;
- In Nevada, judges do not contribute to the state judicial retirement plan or to the federal social security system. The retirement benefit is equal to 75% of a judge's salary immediately preceding retirement and is subject to periodic cost-of-living increases provided after 3 years;
- In New Jersey, judges contribute 3% of the difference between their salary on January 9, 1982 and on January 18, 1982. Benefits equal 75% of a judge's final salary, and judges receive social security benefits; however, they have to pay state income taxes on benefits received;
- Under Pennsylvania's standard plan, judges must contribute 5% of gross earnings, and the maximum annual pension is equal to 2% of the judge's final average salary (high three) for each year of service. Judges may enroll in optional and/or supplemental retirement plans to increase benefits;
- Minnesota has one of the most complicated sounding formulas. Judges contribute 6.27% of their annual salary. Benefits for judges who retire at age 65, with at least 5 years of service, are calculated by taking the average of the five highest annual salaries paid to the judge within the 10 years preceding retirement and multiplying that amount by 2.5% for each year of service before July 1, 1980, and by 3% for each year of service after June 30, 1980. The actual amount paid is computed by converting this amount to a monthly amount and subtracting from that 75% of the judge's monthly social security benefits, to a maximum of 65% of the final salary. Retired judges have to pay state income taxes on benefits they receive after recouping their investment.

One can readily see that a meaningful comparison of Hawaii's retirement benefits with these and other states would require in depth computations and analyses.

Fortunately, the usefulness of comparing vesting periods for full retirement benefits may be more readily apparent. In Hawaii, judges are eligible for full retirement benefits regardless of age, provided they have at least 10 years of service, or 5 years of service if they are at least age 55. Only Pennsylvania is somewhat similar to Hawaii in allowing judges to vest for pension benefits regardless of age, upon accrual of at least 10 years of retirement service credit, or after age 60 with at least 3 years of service. Most states have higher minimum age requirements for judicial retirement and/or longer service requirements for vesting than Hawaii. Some states have a short vesting period similar to Hawaii, but it is coupled with a higher age requirement, such as age 60; furthermore, most of these states also offer full benefits upon retirement at a younger age, but coupled with substantially more service years, such as 20 years. The following are illustrative of these variations:

- Alaska grants benefits to judges who are at least 60 years old, with at least 5 years of service.
- In Idaho, benefits are available to judges at least 65 years old, with at least 4 years of service, or at any age, with at least 20 years of service.
- Illinois which allows retirement of judges who are at least 60 years old, with at least 10 years of service, or at least 62 years, with between 6 and 10 years of service.
- In Mississippi, a judge may retire after age 60, with at least 4 years of service, or at any age, with at least 25 years of service.
- In Montana, judges who are at least 65 years of age, with 5 years of service, are eligible to retire.
- In New Mexico, judges are eligible for retirement if they have at least 5 years of service and retire when they are at least 64 or have at least 15 years of service and retire when they are at least 60.
- Tennessee grants benefits to judges who are age 65, with 8 years of service, or age 55, with 24 years of service.
- Vermont requires judges to be at least 62 years old and have 5 years of service or be at least 65 years old.
- Virginia grants benefits to judges who are age 65, with at least 5 years of service, or age 60 with 30 years of service.

A number of states have descending years of service requirements as age increases. For example:

- Colorado allows retirement at: ages 55 to 59 with 30 years of service; ages 60 to 64 with 20 years of service; and age 65 or over with at least 5 years of service.
- Louisiana allows a judge to retire: at any age with 18 years of service; at age 70 with any number years of service; after age 55 with at least 12 years of service; or at 50 years or after with at least 20 years of state service, 12 of which were as a judge.
- To qualify for benefits in New Jersey, judges must have: at least 10 years of service and retire on their 70th birthday; at least 15 years of service and retire when they are at least 65; or at least 20 years of service and retire when they are at least 60 years old.
- South Carolina provides benefits to judges who retire after: 25 years of service regardless of age; 20 years of service at age 65; or 15 years of service at age 70.
- Before Alabama changed its eligibility requirements to at least age 60 with at least one full term on the bench, it allowed a judge to retire at: age 60 with at least 18 years of service; age 62 with at least 15 years of service; age 65 with at least 12 years of service; and age 70 with at least 10 years of service.

A number of states have relatively simple provisions with higher age or service requirements than Hawaii. Illustrative are: Arizona which allows judges to retire at age 60, with at least 25 years of service, or at age 62, with at least 10 years of service; Nebraska provides benefits for judges retiring on or after reaching age 65; North Dakota grants benefits at age 65 or when age added to years of service equals at least 88; and South Dakota grants benefits to judges who retire after age 65 and have participated in the retirement system for at least 15 years.

Several states also allow for reduced benefits upon early retirement, such as Nevada, which provides full benefits for retirement after age 60, with at least 22 years of service, and partial benefits for judges who retire after age 60, with at least 10 years of service. North Carolina allows early retirement with reduced benefits for judges reaching age 50, with 5 years of service; judges who retire on or after age 65, with at least 5 years of service, or after age 50, with at least 24 years of service, are eligible for full retirement benefits.

b. Retired judges' health benefits

A few states continue to provide health insurance coverage to retired judges, similar to Hawaii, which provides full health and life insurance coverage (except that judges retiring with less than 10 years service must share the cost). For example, in California, judges receive full health and dental benefits. Maine pays for health and life insurance for retired judges (basic plan), but the dental insurance ceases. In Maryland, retired judges with at least 16 years of service get the same

health insurance subsidy as provided to active judges (those with less than 16 years get a reduced subsidy). In Idaho and Pennsylvania, the state provides fully paid health/medical insurance for judges. However, in Pennsylvania, the coverage applies only to those judges who retire with 10 or more years of service and includes hospital, medical/surgical, major medical, dental, vision, hearing, and prescription drugs.

A few states continue to provide benefits, but at a lower level than that provided active judges. For example, in Delaware, health care continues at the same level as for an active employee for those retired judges who are under 65; but the state pays only the cost of Medicare supplement for retired judges (and spouses of retired judges) over age 65. Kentucky pays only the cost of Medicare supplement for retired judges. Finally, a few states continue benefits only for some judges. For example, Michigan pays life insurance for all retired judges, but continues health insurance coverage only for retired supreme court justices and court of appeals judges.

c. Paid leave provisions

It is perceived, within the State at least, that Hawaii has a generous leave policy for public employees, including judges. Judges receive 21 days of vacation leave and 21 days of sick leave per year. Additionally, as in nearly all states, judges are granted 15 days of military leave each calendar year when called for active duty or to participate in training exercises. Furthermore, Hawaii is the only state noted as having paid funeral leave (up to 3 days for an immediate family member). Several states, however, have equally or even more generous leave policies. For example, Alaska gives judges 30 days of vacation leave, unlimited sick leave as needed each year (not charged against vacation leave), and five days educational leave.⁴⁸ In Maryland, judges are entitled to 27 vacation days per year, plus 3 personal days; sick leave is taken as needed and not charged against vacation or personal leave. Minnesota judges have 30 working days of vacation leave and 10 days for education leave per year, (no mention was made of sick leave, however). Rhode Island judges receive six weeks of vacation leave, sick leave on an as needed basis, and up to 4 days of personal leave.

A number of states have no formal specified leave provisions, including Arizona, Arkansas, Colorado,⁴⁹ Florida, Georgia, Kentucky, Nebraska, North Dakota, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia,⁵⁰ and Washington. In between these extremes are states such as Idaho, whose judges are eligible for 22.5 vacation days and accrue sick leave at one day a month, or Utah, whose judges receive 20 days of vacation per year.

⁴⁸In lieu of vacation and sick leave, Alaska's district court judges receive either 2, 2.25, 2.5, or 3 days of personal leave per month (depending upon years of service). American Bar Association, National Conference of State Trial Judges, *A Survey of State Judicial Fringe Benefits* (2 ed.; Chicago: 1996), at 7.

⁴⁹Colorado has no formal policies, but judges have 25 per year to use at their discretion. *Id.* at 21.

⁵⁰Except district court judges receive 20 vacation days per year, 10 hours of sick leave each month, and 11 days of educational leave. *Id.* at 178-179.

Hawaii's judges have 14 paid holidays in an election year, as does New Jersey. Pennsylvania has from 12 to 14 holidays per year. Only Maryland, with 14 days in a nonelection year and 15 days in an election year, and West Virginia, which has 13 to 15 holidays per year, have more than Hawaii. Alabama, Delaware, Massachusetts, Vermont have 13 holidays per year. A number of states have 10 holidays a year, including Arizona, Arkansas, Idaho, Minnesota, Mississippi, New Mexico, North Dakota, South Dakota, and Washington. Iowa has only 9 holidays per year; and Texas has no formal holiday provisions. The other states generally have between 11 or 12 holidays per year.

d. Health/Medical benefits

Because of the variety of health plans available to judges in the states, no attempt was made to compare these health benefits. It is interesting to note, however, that a few states include dental coverage for their judges in their health benefits package. Alaska is the most generous in providing dental coverage for judges and their family members. More typical are Alabama, Idaho, Michigan, (coverage varies by court plan) Minnesota, and Rhode Island, which provide dental coverage only for judges, but allow judges to add family members at their own cost.

e. Life Insurance benefits

Hawaii provides active judges under age 65 with \$25,000 of life insurance benefits, with descending amounts as age increases. Several states are more generous than this, basing benefits on salary levels. For example, in Illinois and Oregon,⁵¹ judges' life insurance benefits are equal to their most recent annual salary. Similarly, Idaho judges have coverage equal to 100% of their salary, until they reach 65 years of age; then it drops to 75% of their salary, and 50% of their salary at age 70. Michigan is also generous: for active judges, the state coverage is equal to two times their annual salary, and in addition, most local governmental units provide varying amounts of coverage;⁵² for retired judges it is 25% of the coverage immediately preceding retirement. In Minnesota, judges have \$55,000 in life insurance coverage.

On the other hand, most states provide judges with considerably less insurance coverage than in Hawaii. As an example, Arizona's basic noncontributory life insurance coverage is \$5,000, but \$10,000 if death results from auto accident where seat belts were worn (additional contributory coverage allowed). Colorado provides \$12,000 in coverage. Alaska provides only \$2,000 in basic life insurance coverage for judges, but also provides \$1,000 for spouses, and \$500 for dependents three years or older. New Mexico provides only contributory life insurance: (\$25,000 of benefits is provided, with judges contributing \$4.42 and the state contributing \$6.652 per month). Several states, such as Alabama, New York, and Rhode Island do not pay for any life insurance coverage for judges.

⁵¹In Oregon, the amount is rounded up to the next multiple of \$1,000. *Id.* at 140.

⁵²Coverage for Maryland's judges is similar, except it is unclear whether judges must pay for some of the coverage. The report states that Maryland's judges "are eligible" for life insurance at one, two, or three times their salary, rounded to the next \$1,000 for a maximum of \$100,000, \$200,000, or \$300,000. *See id.* at 78.

f. Transportation

Most states provide parking for judges and make some reimbursement for mileage under specified circumstances. In addition, a few states provide the chief justice of the supreme court with a car, including Alaska, Hawaii (car and gasoline), and Tennessee (including gasoline, maintenance, and insurance). In Georgia, the chief justice is given a car and driver, and the chief judge of the court of appeals is given a car. Similarly, in Rhode Island, the chief justice and all chief judges are provided with a state car. North Dakota is quite generous, making cars and gasoline available to all of its judges. In states where judges must travel far, judges may be provided with a car and gasoline (such as in Utah) or receive a monthly car allowance (such as in Texas). In some states, certain judges receive an annual travel or car allowance. In North Carolina, superior court judges receive a \$7,000 travel allowance each year for subsistence, in addition to \$0.28 per mile for travel. Justices of the Pennsylvania supreme court receive an annual car allowance of \$9,000, which is intended to reimburse them for the purchase or lease of an automobile, plus operating costs such as insurance, gasoline, and maintenance. In addition, the president judges of the lesser appellate courts have access to a state owned car, while the associate judges are reimbursed for travel costs.

g. Expenses

Most, but not all, states reimburse judges for expenses in connection with approved education or judicial conferences and bar dues. A few states provide only limited reimbursement of such expenses. For example, in Arizona, it appears that only appellate judges are reimbursed for dues, conferences, and travel. In Arkansas, judges are not reimbursed for dues or expenses, although registration fees are waived for judges at state bar association meetings and seminars. At least two states provide some judges with expense allowances. In Indiana⁵³ and Pennsylvania, the justices of the supreme court and judges of the intermediate appellate court receive statutorily prescribed expense allowances; and in Virginia, the justices of the supreme court and judges of the court of appeal receive a \$6,500 allowance annually.

h. Recreational privileges

A few states provide some type of recreational privilege to their judges. New Hampshire judges receive 50% discounts on admissions to all state-owned recreational facilities. Additionally, one of the eligible HMOs in which judges may participate offers free health club membership as part of its wellness program. Also, North Dakota has discounted fees for judges at the YMCA, depending upon location, and Oregon judges receive a 50% discount off regular initiation fees charged by the Northwest Athletic Clubs Association.

i. Miscellaneous benefits

A few states have other miscellaneous benefits. The most remarkable of these are

⁵³In Indiana, the annual subsistence allowance to defray expenses relating to the discharge of duty ranges from \$5,500 to \$3,000. *Id.* at 58.

Arizona's state-sponsored day care, in which judges are eligible to participate, and its state-operated cafeterias in which judges may dine.

Clearly fringe benefits comprise a significant percentage of a judge's total compensation. The exact value of the benefits package naturally depends upon the particulars of the benefits provided. Although the foregoing discussion illustrates the complications involved in comparing such packages, it also highlights the necessity for including consideration of fringe benefits if a fair and accurate comparison of compensation is to be achieved.

Economic indicators

Although commentators concede that one should not expect to reach full economic potential on the bench, they nonetheless maintain that it is unreasonable to allow inadequate compensation to erode a judge's economic position to the point that personal and family financial concerns become a distraction. They contend that the issue extends beyond a simple judicial pay raise, noting that lengthy waits between judicial pay increases, coupled with the rising cost of living, seriously diminishes judicial purchasing power. The present situation in Hawaii is a prime example of this. The 1996 Judicial Salary Commission Report found that the salaries of Hawaii's judges are far below their respective consumer price index adjusted salary levels. Using the 1995 consumer price index for urban dwellers for Honolulu, the Commission determined that the salary of the chief justice was about 70%, and the salaries of circuit court judges were about 72%, of 1969 salary levels, respectively.⁵⁴ Furthermore, the Commission found that, in addition to the erosion in their salaries, Hawaii's judges pay a relatively higher cost for goods and services than judges on the mainland. The Commission concluded that the representative consumption basket in Honolulu is 25% more expensive than in the average mainland urban area; and when estimates of personal income taxes and insurance are included, Honolulu is 34% more expensive than the Mainland.⁵⁵

To obviate this situation and ensure regular adjustments in salary that, at a minimum, keep pace with the cost-of-living, it has been suggested that salaries of judges be tied to some economic indicator. It is unclear, however, which indicator should be used. Some commentators have urged that judges' salaries be tied to cost-of-living; however, reference to "cost-of-living" is problematic. Cost-of-living refers to the amount of money it takes to live in a particular place at a particular lifestyle or quality of life. Therefore, no fixed level for cost-of-living exists, as it differs according to location and lifestyle.

Although comparisons may be made between what it costs to buy the same goods and services at different locations, these still do not accurately and fully reflect the actual cost of living. One example of such a comparison is the American Chamber of Commerce's cost of living differential showing comparisons between major urban areas. This index does not include

⁵⁴ 1996 Hawaii Salary Commission Report, *supra* note 3, at 19.

⁵⁵ *Id.* at 23.

Honolulu, however. Moreover, it has been criticized as having a narrow, consumption-based perspective.⁵⁶ Other cost of living comparisons exist, but the reliability of these appear uncertain. According to the Department of Business, Economic Development, and Tourism, the Bank of Hawaii, following methodology employed by the United States Department of Labor, Bureau of Labor Statistics, in their discontinued family budget studies, (which made official comparisons of Honolulu and mainland living costs), unofficially calculates the cost-of-living based upon a hypothetical budget for a four-person family at an intermediate standard.⁵⁷ In addition, the United States Office of Personnel Management compiles a comparison of prices in Hawaii and Washington D.C. to provide a basis for cost of living adjustments for federal employees in Hawaii. The Department of Business, Economic Development, and Tourism advises, however, that the data from these two sources are subject to “technical limitations and must be interpreted with considerable caution.”⁵⁸ Accordingly, there appears to be no reliable measure of the actual cost-of-living.

Furthermore, the term “cost of living” is often confused with, or incorrectly used to refer to, the consumer price index, which is widely used as an indicator of the rate of inflation that the average consumer faces.⁵⁹ The consumer price index is a relative index that measures the average change in prices over time for a specific set of goods and services, including food, clothing, shelter, fuels, transportation, medical services, drugs, and other goods and services that people buy for day-to-day living. Consequently, the consumer price index is depicted symbolically as a market basket of goods and services. Because the consumer price index does not measure actual price levels (only change in prices), and it excludes certain non-consumption items, including income taxes and social insurance taxes, such as social security, it is not a true cost of living indicator. However, by measuring price changes from an arbitrarily designated reference date, the consumer price index provides a valid measure, in times of rising prices, of the relative rate of inflation or, conversely, of the diminution in the value of a dollar against a fixed base year. Thus it provides a reliable measure of the *change* in the cost of living.⁶⁰

The Bureau of Labor Statistics publishes a consumer price index for two population groups: a Consumer Price Index of All Urban Consumers (CPI-U), which covers approximately

⁵⁶See Paul H. Brewbaker, *Hawaii’s Cost of Living in 1990: Urban Four-Person Family Budgets at an Intermediate Standard of Living* (Bank of Hawaii, Honolulu: 1991), at 1.

⁵⁷Hawaii, Department of Business, Economic Development, and Tourism, *1996 Data Book* (Honolulu: 1996), at 365.

⁵⁸*Id.* Brewbaker acknowledges inherent weaknesses in the underlying estimating methodology, one of which is that the “market basket,” relied upon by the Bureau of Labor Statistics, reflects consumption and employment patterns of a family in the 1960s and has never been updated to reflect current consumption patterns. See Paul H. Brewbaker, *Hawaii’s Cost of Living in 1990: Urban Four-Person Family Budgets at an Intermediate Standard of Living* (Bank of Hawaii, Honolulu: 1991).

⁵⁹Telephone conversation with Robert Shore, Chief, Economic Branch, Research & Economic Analysis Division, Department of Business, Economic Development, and Tourism, October 10, 1997 [hereinafter cited as Shore].

⁶⁰See Hawaii, Department of Business, Economic Development and Tourism, *Quarterly Statistical and Economic Report, 1st Quarter* (Honolulu: 1989), at 9-10.

80% of the total population and a Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), which covers 32% of the total population. The CPI-U includes such groups as professional, managerial, and technical workers, the self-employed, short-term workers, the unemployed, and retirees and others not in the work force, in addition to the urban wage earners and clerical workers covered under the CPI-W. Separate indexes also are published by size of city, region of the country, for cross-calculations of regions and population-size classes, and for twenty-eight local areas, including Honolulu.⁶¹

There are other factors that can be indexed also, such as per capita income or employment cost, but again, these are not a complete reflection of a state's cost of living. It has been noted previously that the District of Columbia (which tracks the compensation of federal court judges), the federal Judiciary, and Illinois base judicial salary adjustments upon changes in the employment cost index.⁶² According to the Department of Business, Economic Development, and Tourism staff, the employment cost index reflects an average of the combined wages and salaries of employees in other designated sectors or groups. The value of this index would be to determine whether increases in all average wages and salaries were keeping up with increases in the cost-of-living. The per capita income index is a variation of the average wage and salary index, but it includes a broader range of income in addition to wages and salaries, including imputed income, which makes it more volatile.⁶³

Finally, an objection raised, from a labor theory perspective, to the association of salary adjustments to any economic indicator is that it is an arbitrary measure having little to do with the major theories behind compensation, (such as the productivity and contribution of the person receiving the adjustment or the shortage of skilled workers to fill critical positions), and, therefore, the consumer price index, or any other economic indicator, by itself, does not provide an adequate basis for determining the appropriate amount of a salary increase. On the other hand, it has been observed that measuring productivity, proficiency, and performance is more difficult to do in the public sector than in a market economy. Furthermore, if the intent is only to compensate for a change in the cost-of-living, as opposed to substituting for merit or performance pay, then use of the consumer price index provides a valid and traditional indicator.

Conclusion

The consensus of commentators appears to be that inadequate compensation has a significant effect on the quality of justice and raises a threat to judicial independence. The difficulty lies in determining what constitutes reasonable compensation. It is apparent that this is a complex issue and that a number of factors may be relevant in determining what constitutes reasonable compensation for judges. This discussion has examined various ideas concerning how reasonable judicial compensation may be achieved and has reviewed factors relevant to a determination of reasonable compensation.

⁶¹For a more detailed description of the consumer price index, **see generally id. at 9-12.**

⁶²**See notes 11-16 in Chapter 3 and accompanying text.**

⁶³**See Shore, supra note 59.**

Chapter 5

VIEWS OF THE JUDICIAL SALARY COMMISSION ON THE SUBJECT OF JUDICIAL COMPENSATION

As directed in the Resolution, the Bureau sought information from the Hawaii Judicial Salary Commission and offered the Commission members an opportunity to discuss their views on the subject of judicial compensation. This Chapter summarizes the input obtained from the Commission members.

Views of the Judicial Salary Commission

The Bureau offered members of the Judicial Salary Commission the opportunity to provide additional input into the study, either by meeting individually or in a group with Bureau staff or by submitting a written response. With the exception of one member, the Commission decided to respond as a whole by way of letter. The Commission's written response is summarized here. A complete copy of the response is reproduced as **Appendix F**.

While advising that Hawaii's judges are "significantly underpaid, relative to jurists in other states, on the federal bench, and in private practice," the Commission reported that: the most recent figures available from the National Center for State Courts indicate that, by July 1, 1997, Hawaii's Supreme Court Justices had fallen from a national ranking of 35th to 38th; and when Hawaii's cost-of-living is taken into account, Hawaii's justices now rank 45th in the nation. The Commission also noted its concern about the eroding value of judges' salaries and contended that "sporadic, lump sum raises simply put off the issue of maintaining judicial salaries at a level commensurate with judicial responsibilities and at a level to attract and retain the best to serve in Hawaii's Judiciary."

The Commission reiterated its "strong support" for the adoption of an automatic salary escalator for judges, stating that "[i]n light of the Governor's veto of the judicial salary increase passed by the 1997 Legislature, we are increasingly persuaded that an automatic salary escalator is imperative." Finally, the Commission, submitting that "an experienced Judiciary is the cornerstone to judicial excellence and judicial independence," maintained that judges, similar to other public employees who "commit a significant portion of their professional careers to public service, should be compensated commensurate with the length of their [public] service" and that "[r]etention increases, or pay supplements for length of judicial service, are an idea whose time has come." The Commission concluded its response by urging implementation of "these long overdue and urgently needed adjustments to the salaries and salary structure of Hawaii's dedicated judges and justices."

Former Co-Chair of the Commission

Mr. Max J. Sword, who was Co-Chair of the Commission at the time it submitted its report to the 1997 Legislature, accepted the Bureau's offer to meet concerning this study. Shortly before the actual meeting date, Mr. Sword was appointed to the Judicial Selection Commission and resigned from the Judicial Salary Commission. Given Mr. Sword's significant contribution to the work of the Commission and the Resolution's directive to consult with the Commission, the Bureau considered it appropriate to include Mr. Sword's comments. Mr. Sword emphasized during his meeting with Bureau staff that the opinions expressed were his personal views and did not necessarily represent those of the Commission. Mr. Sword's comments are summarized in the remainder of this section.

Mr. Sword was asked his reaction to the traditional approach, historically favored by many in Hawaii, of using the Governor's salary as a bench mark in setting the salaries of all other exempt government officials, including judges. Mr. Sword explained that he was a firm believer in the separation of power within three distinct branches of government. Each branch of government has a different role and function, and compensation should be set accordingly. Furthermore, judicial independence requires there to be a fair and impartial mechanism for achieving judicial salary adjustments that avoids politics as much as possible. Accordingly, Mr. Sword indicated he does not accept the traditional approach that the Governor's salary should be used as bench mark in setting the salaries of other exempt government officials. If this approach were to be used, however, Mr. Sword pointed out, as have others,¹ that because the Governor has a number of "perks" (house, use of car and driver, etc.) in addition to his cash compensation, any fair comparison using the Governor's compensation should take into account the value of these perks.

Mr. Sword was asked his response to concerns raised that the Commission's proposals may be perceived as granting judges special treatment not afforded other exempt employees. Comparing the operation of state government to that of a large corporation, Mr. Sword stated that he feels strongly that salaries should be adequate to attract good people in all areas of government. In that context, he observed that the Governor and his cabinet also should be paid more and conceded that department heads and deputies deserved to have a similar, but separate, salary escalator, with the Governor's salary set at the top of that pay scale. He noted, however, that the rationale justifying longevity pay for judges does not apply to department heads because they generally serve in the same position only as long as the Governor holds office.

With respect to the advantages of having a sitting judge serve out a long tenure on the bench, Mr. Sword stated that, generally, as with most things, the more experience a judge has on the bench, the better the judge is able to perform. He conceded that this may not always be the case, however, and indicated that, in his opinion, any judge who is not performing his or her duties adequately should not be retained. Mr. Sword acknowledged that the Commission wrestled with the issue of how judicial performance should be evaluated and found resolution of the issue difficult. He noted that it requires a different standard of evaluation than in a business

¹See note 38 in Chapter 4 and accompanying text.

environment, where assessments are made using objective criteria. Judges have to interpret common law and statutory law and rule on the legal merits, given a particular set of facts. It is not a simple question of whether you agree or disagree with their rulings.

With respect to whether retirement and other benefits should be addressed in tandem with salary provisions, Mr. Sword acknowledged that judges' retirement benefits are very favorable and may not encourage long tenure. Conceding that the Governor may have a point with respect to judicial retirement benefits,² he suggested that the entire compensation package be examined to arrive at a good package that strikes a balance between compensation that is both equitable and commensurate with the duties required of the office and that will attract the best legal minds to the bench. Mr. Sword acknowledged that the Commission, in comparing judicial salaries in Hawaii with those of judges in other jurisdictions and with those of local private attorneys, did not take into account the value of fringe benefits, such as vacation, health insurance, pension, and retirement benefits, as part of the overall compensation package. According to Mr. Sword, one problem the Commission had in making such comparisons was that too much disparity exists to permit any kind of summary or conclusion with respect to the value of the benefits. Furthermore, this information with respect to private law firms is difficult to obtain, because many firms are unwilling to divulge such information.

Mr. Sword was asked whether he had a preference for one method, over another, of achieving an automatic salary escalator provision. He responded that he personally has philosophical reservations about tying judicial salaries to those in any other branch of government, such as the executive branch through collective bargaining increases, because he believes there needs to be a sufficient nexus between the amount of pay awarded and the work performed. Mr. Sword noted that previous reports of the Commission had recommended tying judicial salary increases to some type of cost of living increase.³ He explained that this method, on the other hand, raised the problem of deciding which numbers to use to arrive at a cost of living increase, because there is no agreement on a formula or equation to use to determine cost of living. Consequently, he concluded that both methods have positives and negatives associated with them. Nevertheless, he maintained that some objective mechanism is critically needed to ensure regular judicial salary increases.

With respect to the issue of longevity pay for judges, Mr. Sword explained that this issue was raised just before the deadline for submission of the Commission's report. He indicated that the Commission recognized that it would be very difficult to devise a system that would reward a sitting judge's experience on the bench but, at the same time, take into account the greater duties and prestige of higher courts and avoid overlapping salaries between court levels. Mr. Sword observed that, although the obvious way to avoid this overlapping of salaries with a longevity pay system would be to create larger differentials between salaries at the different court levels, this solution might be politically and economically infeasible. He noted that, given the complications involved, the Commission did not have sufficient time to address this issue in its report. Nevertheless, Mr. Sword indicated that, because he believes there should be a strong sense of civic

²See notes 46-47 in Chapter 4 and accompanying text.

³See Hawaii, Report of the Judicial Salary Commission (Honolulu: October 1994), at vii and 29.

duty on the part of a person wanting to be a judge, he feels it is important to recognize and reward such commitment to public service by providing for judicial salary increases tied to length of service on the bench.

Conclusion

The sources whose views are presented here indicated that the continuing failure to maintain reasonable judicial salary levels has been counter productive to the Judiciary. The sources contend that the need to preserve judicial independence and excellence and maintain an experienced judiciary necessitate paying judges reasonable levels of compensation. They contend, moreover, that there must be an objective mechanism to ensure reasonable increases are made to judicial salaries on a regular basis. An automatic salary escalator and some system for additional pay for judges based upon length of service were suggested as means toward achieving these goals.

Chapter 6

SUMMARY AND RECOMMENDATIONS

General Findings and Summary

1. *The Bureau finds that the current system for determining judicial pay increases has failed to provide adequate judicial compensation on a regular basis; and this failure to maintain reasonable levels of compensation has had a detrimental effect on, and threatens to compromise the independence of, the Judiciary.*

The lack of a judicial pay increase in more than seven years reportedly accounts for the decision within the last several years by a number of judges to step down. Since the last judicial increase in 1990, judges' purchasing power has decreased by 25% as a result of inflation and the rising cost of living. This present interim between pay increases is only the latest of many such lengthy interludes.¹ Moreover, history reveals that judicial pay raises have often been held hostage to the political process. The need to depoliticize the process is apparent. The absence of an objective, statutorily established mechanism to ensure fair and reasonable salary increases on a regular basis forces the Judiciary into the potentially compromising position of lobbying the Legislature for increases in salary and benefits.

The independence of the Judiciary is further compromised when personal economic pressures become a distraction sufficient to interfere with the exercise of "independent and dispassionate judgment."² A lifetime commitment to the bench, in the "tradition" of an independent judiciary, entails considerable financial sacrifice, given that most judges could earn far higher salaries by remaining in the private sector. Judges are at a further economic disadvantage in comparison to private attorneys, law school faculty, and others, because, unlike these latter groups, judges are largely precluded by the Code of Judicial Conduct from supplementing their salaries from outside sources. These financial sacrifices are inherent in any judicial career; however, when coupled with inadequate salaries, such sacrifices are greatly exacerbated.

Conventional wisdom holds that fair and adequate compensation is necessary to ensure qualified and experienced judges. Conversely, insufficient compensation apparently has the concomitant effect of driving experienced judges from the bench and discouraging highly qualified attorneys from applying for judicial vacancies. These effects, in turn, diminish the quality of the bench. The Legislature has repeatedly dealt with the problem of insufficient judicial compensation by granting sporadic, lump-sum increases. History demonstrates, however, that this type of response cannot adequately rectify the problem. As judges are bypassed while other state workers receive salary increases, the effect is not only demoralizing and frustrating for judges, but the

¹See discussion of history of judicial pay increase in Chapter 2.

²See Hawaii, Report of the Commission on Judicial Salaries (Honolulu: 1984), at 3.

failure of judicial salaries to at least keep pace with inflation causes judges to lose ground as their purchasing power shrinks. Moreover, the lump-sum salary increases that then become necessary, every four to eight years, to bring judges current with inflation concomitantly raise the public ire and contribute to the Legislature's reluctance to increase judicial salaries. This response has become a pattern that perpetuates itself because of its inadequacy. As the 1984 Commission on Judicial Salaries' observed, this failure to maintain reasonable levels of compensation "accumulate problems that in the long-run are more costly to correct than modest adjustments made on a regular basis."³

This continuing failure to maintain reasonable salary levels has resulted in mounting calls for a permanent, objective process that would: ensure reasonable and regular salary adjustments; obviate the need for controversial, lump-sum, catch-up adjustments; and preserve the integrity and independence of the Judiciary. In response, the Legislative Reference Bureau, through Senate Concurrent Resolution No. 2, Senate Draft No. 1, was requested to study and recommend an appropriate judicial salary structure.

An examination of judicial salaries across the country reveals that Hawaii now ranks near the bottom. The National Center for State Courts' latest judicial salary ranking by state demonstrates that, as of July 1997, Hawaii's rank has fallen: to number 38 out of 50 and 34 out of 39 for salaries paid to justices on the supreme court and judges on the intermediate court of appeals, respectively; and to 34 out of 50 for salaries paid to circuit court judges.⁴ According to the Judiciary, when the National Center's salary data are "normalized" to eliminate the disparity caused by differences in per capita income among the states, Hawaii's rank drops even farther to: 44 out of 50 and 35 out of 39 for salaries paid to justices on the supreme court and judges on the intermediate court of appeals, respectively; and to 44 out of 50 for salaries paid to circuit court judges. (See **Appendix G.1 to G.3**)

2. *The Bureau finds that objective mechanisms have been used in other jurisdictions to provide regular and reasonable judicial salary adjustments; however, implementation in Hawaii of only one such mechanism, alone, may be insufficient to resolve the problems posed by inadequate judicial salaries and to ensure regular and reasonable salary adjustments.*

A comprehensive review of the statutory salary provisions and structure for judges in all states and the District of Columbia indicates that twenty-two states and the District of Columbia have one or more objective mechanisms in place to effect regular and reasonable judicial salary adjustments. These mechanisms include: an automatic salary escalator to afford judges an automatic increase upon the happening of a certain event, such as a pay increase for state workers or an increase in the consumer price index; longevity payments based upon length of service; and authoritative compensation commissions whose recommendations are determinative, unless affirmatively rejected by the Legislature. Nevertheless, it appears use of these mechanisms alone may not secure a high ranking of a state's judicial salaries. For example, Maine provides for adjustment of judicial salaries according to any percentage change in the consumer price index, not to exceed 4%. However, the Legislature can withhold this cost-of-living adjustment in certain

³See *id.* at 30.

⁴National Center for State Courts, "Survey of Judicial Salaries" (Williamsburg: Fall 1997), at 10.

fiscal years. This proviso may account for Maine's low ranking at number 40 out of 50 and 35 out of 50 for the court of last resort and the general jurisdiction trial court, respectively. In addition to Maine, eight other states that employ some type of salary adjustment mechanism have one or more courts that are ranked number 30 or below in the National Center for State Courts' latest salary ranking.⁵

This finding lends support for the conclusion that determining reasonable compensation is a complex process, requiring consideration of a number of factors in arriving at an adequate and reasonable level of compensation. Moreover, it also points out that, despite the advantages presented by these various mechanisms, implementation of only one mechanism, by itself, may not be a panacea for the problems posed by inadequate judicial salaries. Each mechanism has a primary focus that may fail to address other concerns sufficiently. For example, an automatic salary escalator is an attempt to keep salaries increases consistent with those of other workers or with increases in the cost of living, but may fail to achieve reasonable and regular compensation levels for judges if those other workers are given either no increase or an insufficient increase or if the rate of inflation slows. Furthermore, an automatic salary escalator does little to recognize the valuable experience and longevity of sitting judges. Similarly, while longevity payments are an attempt to reward experience and encourage longevity in a position, they would affect only those limited individuals who meet the required years of service. Thus it would provide little assistance in keeping judicial salaries across the board current with inflation. Compensation commissions ideally should remove the issue of compensation from the political arena and provide for reasoned consideration of all relevant factors in determining reasonable salaries. However, as seen in Chapter 3, a commission may be only advisory or, even if authoritative, the commission's authority may be watered down.⁶ Also, compensation commissions may fail to consider all relevant criteria in their decision making. For example, given the high percentage of overall compensation comprised by fringe benefits,⁷ a fair comparison of the compensation of judges in Hawaii with that of others, whether judges in other jurisdictions or private attorneys or others, requires comparing total compensation packages, not merely salaries. Yet, this has not been done, primarily because of the complexities involved in comparing compensation packages, as even the brief examination, in Chapter 4, of fringe benefits afforded by other states illustrates. This observation points out the need for input into the Judicial Salary Commission's decision-making by qualified benefits/compensation specialists.

⁵States tying judicial salary adjustments to those of civil service or state employees: Kansas's court of last resort, intermediate court of appeals, and general jurisdiction trial court rank 34, 30, and 38, respectively; Kentucky's court of last resort ranks 31 (the intermediate court of appeals and the general jurisdiction trial court both rank 29); New Hampshire's court of last resort and general jurisdiction trial court rank 35 and 32, respectively; South Dakota's court of last resort and general jurisdiction trial court rank 46 and 49, respectively. States providing longevity payments: Nevada's court of last resort and general jurisdiction trial court rank 42 and 44, respectively. States relying on determinative compensation commissions: Alabama's general jurisdiction trial court is ranked 42 (however, its court of last resort and intermediate court of appeals rank 10 and 8, respectively); and Minnesota's court of last resort, intermediate court of appeals, and general jurisdiction trial court rank 36, 36, and 39, respectively.

⁶For example, see the descriptions of compensation commissions in Alabama, Arizona, and Minnesota in Chapter 3.

⁷See notes 41-42 in Chapter 4 and accompanying text.

Finally, it should be pointed out that these mechanisms are prospective in nature and are designed, if implemented, to ensure regular and reasonable salary increases in the future. Implementation of one or more of these mechanisms, alone, would not remedy the present situation, in which Hawaii's judges find themselves, of having sub par base salaries.

Bureau Recommendations

Based upon the foregoing discussion, the Bureau concludes that an appropriate salary structure should include one or more objective mechanisms to: remove judicial salary issues from the political arena; and ensure both reasonable and regular salary adjustments that, at a minimum, keep pace with increases in the cost-of-living and alleviate the need for large catch-up adjustments. Accordingly, the Bureau makes the following recommendations to the Legislature.

1. *Recommendation No. 1: The Legislature should enact a judicial salary increase as proposed in House Bill No. 1393, C.D. 1, regular session of 1997.*

As noted, implementation of one or more of the objective mechanisms discussed, alone, will do nothing to ensure that the present base pay of judges is raised. Failure to increase judicial base salaries to a reasonable level, prior to implementing any of these mechanisms, would have the effect of locking judges in at an unfair baseline at the outset and, thereby, preventing their salaries from ever “catching up” to inflation. Therefore, given that Hawaii’s judges have had no pay increase in nearly eight years, the Bureau suggests that, in conjunction with implementing objective mechanisms to ensure periodic, reasonable salary adjustments, the Legislature also increase judicial base salaries. The Bureau would note that the judicial pay raise proposed in House Bill No. 1393, C.D. 1, and approved by the Legislature during the regular session of 1997 would seem a logical starting position.

2. *Recommendation No. 2: The Legislature should adopt one or more objective mechanisms to provide regular and reasonable judicial salary adjustments.*

Several options are available by which the Legislature may implement an objective mechanism.

***Option 1.** The Legislature could enact a statute that provides an automatic salary increase for judges tied to increases given to other state employees.*

An automatic salary escalator mechanism would achieve predictability and consistency in judicial salary adjustments and avoid the necessity for large catch-up increases that have historically taken place. In addition, the regular, systematic nature of this approach should reduce the politics that accompany any salary increase for judges and obviate the need for lobbying of legislators by the Judiciary, thus preserving judicial independence. The mechanism most commonly used by other states is tying judicial salary adjustments to increases given, either as negotiated increases or cost-of-living increases, to all or certain segments of state workers.

It has been suggested that adjustments to judicial salaries in Hawaii be tied automatically to collective bargaining negotiated increases, particularly those of unit 13 (professional and scientific employees) or to increases given to the managerial white-collar officers and employees in the excluded managerial compensation plan, pursuant to section 77-13.1, of the Hawaii Revised Statutes. Proponents of this mechanism have promoted it for its element of fairness, in ensuring that judges receive salary adjustments on a regular cycle with the vast majority of other state employees. Moreover, there appears to be some precedence for tying salary adjustments for excluded employees to collective bargaining negotiated increases, based upon chapter 89C, Hawaii Revised Statutes, which permits pay adjustments, for certain excluded officers and employees, of an amount not less than that provided under collective bargaining agreements for comparable officers and employees.⁸ Finally, because collective bargaining for public employees is such an accepted principle in Hawaii, it has been suggested that this mechanism may be seen as more palatable than others for which no local precedent exists, such as tying raises to the consumer price index.

On the other hand, it has been pointed out that, although the tying of judicial salary increases to those of other employees may be acceptable if the increase is intended to be a cost of living increase, but if, instead, the increase is intended to be commensurate with what a particular collective bargaining unit has earned, it may seem both arbitrary and unfair to tie judges' salaries to this percentage increase. Furthermore, because any collective bargaining unit's salary increases must be negotiated as part of the contract agreement, tying judicial salary adjustments to collective bargaining increases, or for that matter, to increases given to other state employees, will not guarantee that judges receive either reasonable or regular salary increases. It will only guarantee that they receive whatever increase, if any, that another group of employees receives. Thus, if a salary increase is consistently denied to the particular group of employees, judges could face the same situation confronting them at present: that is, a sub par judicial salary base with severely diminished purchasing power.

In any event, the primary impediment to tying judicial salaries to collective bargaining negotiated increases is that such action is presently prohibited under state law. As discussed in Chapter 2, section 78-18.3, Hawaii Revised Statutes, forbids any mandatory salary adjustment or increase for certain elected or appointed officers and employees, including judges, that is dependent upon or related to negotiated salary adjustments or increases received under collective bargaining agreements by civil service employees or other public employees covered by collective bargaining.⁹ The Legislature, in enacting this provision, stated its strong opposition to an automatic adjustment provision, specifically declaring it "unsound and inadvisable public policy" that is "detrimental to the public interest" and "anathema to good government and to present sunshine laws"¹⁰ The Legislature's reasoning appears to have been that the public deserves

⁸See Haw. Rev. Stat. §89C-2.

⁹Haw. Rev. Stat. §78-18.3.

¹⁰1982 Haw. Sess. Laws Act 129, §34. See also notes 26-27 and accompanying text in Chapter 2.

input into salary discussions of top-level government officials “who have the greatest responsibilities to the public”¹¹

Although judges were included under this provision, in reality, they are neither political appointees nor elected officials who are responsible to the public. In contrast, they are members of an independent judiciary, and as such, they must base their deliberations upon the legal merits of a case before them and must not be guided by popular opinion or the will of the people. Therefore, it could be argued that judges should not be subject to the constraints of section 78-18.3. However, the original intent of the statute was to eliminate the inherent conflict of interest that arises when the salaries of state or county officials who are parties in negotiating the collective bargaining agreements are adjusted based upon those negotiated agreements. Even though judges are not direct parties to collective bargaining negotiations, there is a possibility under some scenario, although admittedly remote, that a collective bargaining dispute could end up in the courts for judicial review.¹²

Accordingly, using collective bargaining negotiated increases to trigger adjustments to judicial salaries faces several impediments. To overcome these, the Legislature would have to revisit the position it took with respect to section 78-18.3, and at a minimum, amend the section to exclude its applicability to judges. Therefore, tying judicial salaries to those of the managerial white-collar officers and employees in the excluded managerial compensation plan may provide a more feasible alternative than collective bargaining negotiated increases, because this would not strictly fall within the prohibitions of section 78-18.3.

The following language is suggested to implement this option:

§ - Automatic judicial salary increases. Whenever officers and employees in the excluded managerial compensation plan who have been designated as holding managerial white-collar positions, pursuant to section 77-13.1, receive a general salary increase pursuant to chapter 89C, the salary of each justice and judge shall be increased by an amount, adjusted to the nearest dollar, computed by multiplying the average of the percentage increases in all monthly steps of the managerial white-collar compensation plan by the annual salary of the justice or judge that is being received as provided by law and that is in effect prior to the effective date of the increase for the managerial white-collar positions. The increase for justices and judges shall take effect when the increase for managerial white-collar officers and employees in the excluded managerial compensation plan takes effect and may be retroactive, if consistent with the provisions of the increase for the excluded managerial white-collar officers and employees.

Option 2. *If the tie to other state employees’ pay is unacceptable, the Legislature could enact a statute that provides an automatic salary increase for judges tied to the Consumer Price Index.*

¹¹Id.

¹²See Haw. Rev. Stat. §89-11(c) (if parties have not mutually agreed to submit to final and binding arbitration, either party may take any lawful action deemed necessary to end dispute).

An alternative means of achieving an automatic salary escalator is to tie salary adjustments for judges to increases in an economic index. Three states tie judicial salary increases to the consumer price index and Illinois, the District of Columbia, and the federal system tie judicial salary adjustments to increases in the employment cost index. Although there are a number of indexes available, as discussed in Chapter 4, the consumer price index is a trustworthy and reliable figure published by the United States government and is the traditional indicator of change in the cost-of-living.¹³ Use of the consumer price index would ensure regular salary adjustments that, at minimum, would keep pace with the rising cost of living and forestall the decline in judicial purchasing power.

It has been suggested that using the consumer price index to trigger judicial salary adjustments may not be as politically acceptable as relying upon collective bargaining negotiated increases. The crux of the problem appears to be that no other group of employees presently is guaranteed a salary increase. Although new contracts are negotiated for collective bargaining unit employees on a regular basis, any salary increases must be negotiated as part of the contract agreement; such increases are not guaranteed. Excluded employees who, under Chapter 89C, Hawaii Revised Statutes, are permitted pay adjustments tied to collective bargaining agreements for comparable officers and employees also are not guaranteed a salary increase; they receive only whatever the bargaining unit negotiates, and thus, there is no guarantee they will receive anything. Consequently, guaranteeing judges an automatic increase may result in complaints that singling out one group of employees for special treatment is arbitrary and unfair.

Another drawback, from the perspective of whether this mechanism will achieve the goal of ensuring reasonable salary levels, is that tying salary adjustments to the consumer price index will only keep pace with inflation; and thus, if the rate of inflation is low, as it is at present, this mechanism will not provide an adequate substitute for merit or performance increases. If this is a concern, the Legislature could rely upon the consumer price index to ensure regular adjustments that keep pace with inflation, coupled with another mechanism, such as longevity pay or an authoritative compensation commission, to provide additional, reasonable salary increases on a periodic basis. It should be pointed out, however, that charts, prepared by the Judiciary to compare what judicial salaries would look like if salary adjustments were tied to the Consumer Price Index (see **Appendix H**) or to the average negotiated increases for collective bargaining unit 13 (see **Appendix I**), reveal that salary levels would be within close range of one another under either method.

The following language is suggested to implement an automatic salary escalator tied to increases in the consumer price index:

§ - **Annual cost of living adjustment.** Beginning July 1, 1998, and every July 1, thereafter, the compensation provided for in sections 571-8.2, 602-2, 602-52, 603-5, and 604-2.5 shall be adjusted to reflect the percentage of increase in the consumer price index for urban wage earners and clerical workers: Honolulu, (all items), as published by the United States Department of Labor, Bureau of Labor Statistics, from January 1st to December 31st of the previous year. However, no reduction shall be made by way of adjustment on account of any decrease in the consumer price index for Honolulu between two successive calendar years.

¹³See notes 59-63 in Chapter 4 and accompanying text.

Option 3. *The Legislature could enact a statute providing for longevity pay to individual judges, based upon their years of creditable service on the bench.*

A noted commentator has advised that there “is no public advantage to a judicial pension system that encourages early retirement. Rather, the system should provide incentives for judges to remain in public service.”¹⁴ The Bureau concurs with this view and recommends that the Legislature consider awarding individual judges longevity pay, based upon their length of service, as an incentive to remain on the bench. The practice of granting employees additional pay for years of creditable service is a common employment practice meant to reward employees for their service and encourage longevity and loyalty. Extending this practice to judges would encourage them to remain in service, thereby ensuring experienced judges on the bench. It also may provide some partial compensation to career judges for the financial sacrifice required of them in foregoing nearly all other sources of outside earned income.¹⁵

In addition, longevity pay would reaffirm the value of work performed at each court level and should reduce the insidious pressure on judges who, despite enjoying their work, may feel compelled to apply for appointment to a higher court simply for the increase in salary. Under the present salary structure, judicial salaries are established based upon court level, with judges at each court level making the same as the other judges at that court level, except for the positions of chief justice and chief judge; and the salary established at a particular court level is less than that for the next highest court level. As an illustration, a judge with twenty years experience on district court makes the same as a newly appointed district court judge and makes less than a newly appointed circuit court judge; and a circuit court judge with twenty years experience on circuit court makes the same as a newly appointed circuit court judge and makes less than a newly appointed intermediate appellate court judge. Thus, barring a legislative increase, generally the only way for a sitting judge presently to obtain a higher salary on the bench is to receive an appointment to a higher level court.¹⁶

It has been suggested that, instead of awarding longevity payments to judges, longevity could be achieved and experienced judges retained simply by making the terms of judicial appointments longer. This suggestion misses the point, however. Unless salaries are increased, a longer term will only lock judges into a longer period at an inadequate salary level. Such tactic may backfire by causing more judges to leave the bench in search of adequate pay and by discouraging qualified attorneys from applying for appointment to the bench. A catch-up salary increase, as history has shown, will only alleviate the problem temporarily and will not achieve the goal of providing incentives for judges to serve longer terms. The solution calls for an objective mechanism to maintain reasonable salary levels. A longevity payment provision is one means of providing reasonable, regular salary adjustments to individual judges.

¹⁴Edward B. McConnell, “State Judicial Salaries: A National Perspective,” 61 Journal of State Government 179, 182 (Sept./Oct. 1988).

¹⁵Judges in Hawaii are permitted to perform marriages for which they receive a nominal fee outside their normal salary.

¹⁶It is possible to increase one’s salary on the same court level by being appointed the chief judge on the intermediate court of appeals or the chief justice on the supreme court. See Haw. Rev. Stat. §§602-2 and 602-52.

There are several ways in which longevity pay can be awarded. For example, each of the four states providing longevity payments for judges do so using different formulas. Each state's provisions are discussed in more depth in Chapter 3. In general, however, the following provisions apply. The longevity payments are in addition to, and are figured as a percentage of, the annual base salary. Although the actual percentages for determining longevity payments are different in each state, the percentages generally increase (although at varying rates among the states) with the number of years of service, up to a specified cap. With the exception of Nevada's treatment of its supreme court justices, a state's formula applies across the board to all court levels. Typically, a minimum of five years of service is required before the longevity payments kick in; except that, Nevada requires a minimum of seven years of service for its supreme court justices, and Connecticut requires a minimum of ten years of service for all judges.

The Bureau prefers a simple longevity payment formula for ease of implementation. Rhode Island's formula presents the best example of simplicity. In Rhode Island, all judges receive longevity payments of 5% of their base salary after five years, 10% after eleven years, 15% after fifteen years, 17.5% after twenty years, and 20% after twenty-five years.¹⁷ Nevada's formula is also relatively simple. In Nevada, the district court (the general jurisdiction trial court) judges receive an additional 1% of their base salary for each year of service starting at five years of service, and supreme court justices receive an additional 6% of their base salary at seven years, plus an additional 1% for each year thereafter. The longevity payment for judges at both court levels is subject to a maximum of 22% of the base salary.¹⁸

The Legislature could adopt a longevity payment system based upon a simple formula such as these or could establish a step salary schedule, similar to that offered for discussion purposes by the Judiciary. Under the Judiciary's scenario, each step provides a 4% increase over the previous step, with step movements for the first three steps occurring on the 2nd, 4th, and 6th anniversary of appointment as a permanent judge; and thereafter, step movements occurring on the 3rd anniversary of the award of the currently existing step. Thus, according to this schedule, a judge would receive a 4% longevity increase to base pay after each of two, four, six, nine, twelve, fifteen, eighteen, twenty-one, etc., years on the bench. **Appendices J and K** show how this would affect judicial salaries. **Appendix J** is based upon present pay levels and **Appendix K** reflects pay levels assuming a 15% one-time pay increase is first made to the existing judicial base pay. In addition, **Appendix L** contains the Judiciary's summary of the basic features of this longevity pay step schedule.

The longevity pay step schedule offered by the Judiciary appears to track the step movements, effective as of July 1, 1995, of collective bargaining unit 13 under the 1993-1997 contract agreement. Under this agreement, the minimum years of creditable service required at an existing step, before movement to the next highest step, was two years between steps C (the lowest step), D, and E, respectively, and three years between steps G, H, I, J, and K, respectively.¹⁹ The average percentage increase between steps was approximately 4%. However,

¹⁷See note 36 in Chapter 3 and accompanying text.

¹⁸See notes 32-33 in Chapter 3 and accompanying text.

¹⁹HGEA-AFSCME, Unit 13 Professional and Scientific 199301997 Contract Agreement at 13.

this step schedule reflects only the minimum number of years of satisfactory creditable service required for movement to the next highest step; it did not guarantee movement to the next step upon reaching this minimum. Upon reaching the minimum number of years, an employee needed a satisfactory job performance evaluation to qualify for movement to the next step. Moreover, because the number of longevity steps and movement between steps within a salary range are subject to collective bargaining negotiations, it is possible that the number of service years required at one step before movement to the next highest step could be increased in the future.²⁰ The Bureau also would point out that the salary level obtainable at the combination of the highest salary range (SC03) and step (step L), where step movements are spaced every three years apart, is slightly below the salary of a district court judge, whereas the salary levels are considerably below that of a district court judge at salary range SC03 for steps C, D, and E, where step movements are spaced only two years apart. See **Appendix M**. Thus, at the higher salary levels, the steps are set farther apart; whereas, at lower salary levels, the steps are closer together.

In view of these considerations, if the Legislature were to implement this type of longevity pay step schedule, it may be more reasonable to provide for step movements on the third anniversary of appointment as a permanent judge and every three years thereafter (as opposed to every two years for the first six years and every three years thereafter).²¹ The Bureau notes that this is generous compared to what other states offer as longevity payments, which, with the exception of Connecticut, roughly averages 1% a year. Furthermore, as noted previously, the other states require judges to serve at least a minimum of five years on the bench before becoming eligible for longevity payments. Finally, it should be pointed out that the longevity payments under a longevity pay step schedule are cumulative; whereas, longevity payments under a simple payment formula, such as exists in Rhode Island, are not cumulative.

The Bureau envisions that any formula or structure for longevity payment would apply across the board to all court levels. Also, given the small differentials between current salaries for the various court levels, it would be difficult to maintain the established relationships between these salaries. Therefore, overlapping of salaries would be inevitable under any longevity pay plan. Thus, a district court judge with several years of experience could make more than a newly appointed circuit court judge and, depending upon number of years on the bench, conceivably could make more than a newly appointed supreme court justice. The Bureau believes that this scenario is reasonable and appropriate, if the intent is to reward experience and encourage longevity. Moreover, the Bureau considers that the substantial salary increases at the higher court levels that would be required to avoid this overlapping are unwarranted, especially given the present need to first raise the base salary level of all Hawaii judges. Therefore, if a sitting judge were appointed to a higher court, the salary transition would be from the currently existing pay level to the lowest level at the higher court that exceeds the current pay level. Furthermore, if a

²⁰See Haw. Rev. Stat. §89-9(a).

²¹The Bureau notes one caveat to this recommendation. If the Legislature intends to award longevity payments in lieu of, as opposed to in addition to, any periodic, across the board salary adjustment (which course of action the Bureau does not recommend), then the Bureau would concur with more frequent step movements.

longevity pay provision were to be implemented, sitting judges should automatically move to the pay level at the appropriate court that is reflective of their total years on the bench as of the provision's effective date.²² Also, because longevity payments are determined as a percentage of base salary, if judicial base salaries are adjusted, longevity payments would be adjusted automatically to reflect the most current judicial base pay amount.

The following alternatives are suggested to implement a longevity payment system:

ALTERNATIVE 1: (*Alternative Preferred by the Legislative Reference Bureau)

§ - Longevity payments for judges; bonus. (a) Beginning July 1, 1998, and each July 1st thereafter, each justice and judge shall receive as longevity pay an annual amount as follows:

- (1) Five per cent of the person's annual base salary after five years of service;
- (2) Ten per cent of the person's annual base salary after ten years of service;
- (3) Fifteen per cent of the person's annual base salary after fifteen years of service;
- (4) Seventeen and one-half per cent of the person's annual base salary after twenty years of service; and
- (5) Twenty per cent of the person's annual base salary after twenty-five years of service.

(b) For purposes of this section, the term "service" means sitting as a permanently appointed judge or justice on any state court including any combination of court levels.

ALTERNATIVE 2:

§ - Longevity pay steps for judges; salary increase. (a) Beginning July 1, 1998, and each July 1st thereafter, each justice and judge shall receive a longevity pay step salary increase in an amount equal to four per cent of the person's base pay after each of the following increments of service:

- (1) Three years of service;
- (2) Six years of service;
- (3) Nine years of service;
- (4) Twelve years of service;
- (5) Fifteen years of service;
- (6) Eighteen years of service;
- (7) Twenty-one years of service;
- (8) Twenty-four years of service;
- (9) Twenty-seven years of service; and
- (10) Thirty years of service.

(b) For purposes of this section, the term "service" means sitting as a permanently appointed judge or justice on any state court including any combination of court levels.

²²However, there should be no retroactive payments for sitting judges.

OPTION 4. *The Legislature could amend the statute relating to the Judicial Salary Commission to:*

- (A) Provide that the Commission's recommendations are determinative, unless affirmatively rejected by the Legislature;
- (B) Require the Commission to consider mandatory criteria in its decision-making; and
- (C) Change the Commission's composition.

Another objective means of obtaining reasonable, periodic judicial salary adjustments could be achieved by granting the Judicial Salary Commission more authority in determining judicial salaries. As discussed in Chapter 3, eight states have authoritative salary commissions whose recommendations become law, unless affirmatively rejected by a majority of both chambers of the Legislature, and the recommendations of the Washington State Citizens' Commission become law automatically, without any action on the part of the Legislature.

The Bureau notes that precedence for such a change in Hawaii's Judicial Salary Commission already exists in the operation of the Hawaii Commission on Legislative Salary. The Hawaii Constitution provides that the recommendations of the Commission on Legislative Salary become effective as provided in its recommendation, unless the Legislature disapproves the recommendation by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the recommendation is submitted, or the Governor may disapprove the recommendation by a message of disapproval transmitted to the Legislature prior to adjournment.²³

The Bureau would recommend the Legislature give similar authority to the Judicial Salary Commission. However, in order to remove the issue of judicial salaries from the political arena as much as possible, without going so far as to recommend the Washington model, the Bureau would propose inclusion of the following provisions: make the Commission's recommendations effective automatically, unless the Legislature rejects or modifies the recommendations by a two-thirds vote of each house in joint session; and allow only a short window of time (such as that provided in several states,²⁴) as opposed to the entire session, during which the Legislature could reject or modify the Commission's recommendations.

In addition, the Bureau recommends that the Legislature consider adopting mandatory criteria to guide the Judicial Salary Commission in its decision making. A few states have articulated such criteria to guide their compensation commissions.²⁵ Interestingly, under the

²³Haw. Const. art. III, §9 (change in salary does not apply to the Legislature to which the commission's recommendation was submitted).

²⁴For example, in Delaware, Illinois, and Rhode Island, the compensation commission recommendations become effective after only 30 days, unless modified or rejected. *See notes 53, 56 and 68 in Chapter 3 and accompanying text.*

²⁵*See note 40 in Chapter 3 and accompanying text.*

SUMMARY AND RECOMMENDATIONS

Hawaii Revised Statutes, arbitration panels in arbitration cases involving collective bargaining units 11 and 12 are required to consider similar factors and include an explanation, in the panel's written opinion, of how these factors were taken into account in the panel's decision making. Accordingly, the Bureau suggests the following factors be included in this mandatory criteria:

- Skill and experience required of the particular court level;
- The overall compensation package presently received by judges, including direct wage compensation, vacation, holidays and excused time, insurance, pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;
- Opportunity for other earned income;
- Changes in the consumer price index;
- The average percentage of negotiated salary increases received by members of collective bargaining unit 13 and the average percentage of salary increases for officers and employees in the excluded managerial compensation plan under section 77-13.1, *Hawaii Revised Statutes*, since the last Judicial Salary Commission report;
- The value of compensable services performed by judges, as determined by reference to judicial compensation packages in other states and the federal government;
- Comparison of judicial compensation packages with those of local attorneys in the private sector;
- Comparison of wages, hours, and conditions of employment of judges with the wages, hours, and conditions of employment of persons performing comparable work for the State or county;
- Interests and welfare of the public; and
- Present and future general economic condition of the State.

Furthermore, in view of the foregoing, the Bureau suggests that the composition of the Commission be modified to ensure that Commission members have the background and expertise necessary to interpret and apply this criteria appropriately. Accordingly, the Bureau recommends the Legislature make the following changes to the Judicial Salary Commission membership:

- Increase the number of members from five to nine, with two selected by the Governor, two by the Chief Justice, and the remaining five selected jointly by the Speaker of the House of Representatives and the President of the Senate;
- Require the Governor and Chief Justice to appoint persons with knowledge of compensation benefits and practices and financial matters;
- Require that, of the five members appointed jointly by the Speaker of the House of Representatives and the President of the Senate, one should represent each of the following five sectors of the State: institutions of higher education, business, professional personnel management, legal profession, and organized labor.

The Bureau considers all of these provisions necessary to enable the Commission to set reasonable levels of compensation on a regular basis. Any watering down of these provisions may make it impossible for the Commission to achieve this goal.

The following language is suggested to implement this option:

§608-1.5 Judicial salary commission. (a) There shall be a judicial salary commission to review and recommend salaries of justices and judges of all state courts and appointed judiciary administrative officers. The commission shall be composed of [five] nine members, two to be appointed by the governor, [one] five jointly by the president of the senate[, one by] and the speaker of the house[,] of representatives, and [one] two by the chief justice. The governor and the chief justice shall each appoint one member who has knowledge of compensation benefits and practices and one member who has knowledge of financial matters. Of the five members appointed by the president of the senate and the speaker of the house of representatives, one member shall represent each of the following: institutions of higher education, business, professional personnel management, legal profession, and organized labor. Members shall be appointed for terms of four years each. Members shall not receive compensation for their services, but shall be reimbursed for traveling and other expenses incidental to the performance of commission duties. For administrative purposes only, the commission shall be attached to the judicial council.

(b) The commission shall consider the following factors in carrying out its responsibilities:

- (1) Skill and experience required of the particular court level;
- (2) The overall compensation package presently received by judges, including direct wage compensation, vacation, holidays and excused time, insurance, pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;
- (3) Opportunity for other earned income;
- (4) Changes in the consumer price index;
- (5) The average percentage of negotiated salary increases received by members of collective bargaining unit 13 and the average percentage of salary increases received by managerial white-collar officers and employees in the excluded managerial compensation plan under section 77-13.1, since the last judicial salary commission report;

SUMMARY AND RECOMMENDATIONS

- (6) The value of compensable services performed by judges, as determined by reference to judicial compensation packages in other states and the federal government;
- (7) Comparison of judicial compensation packages with those of local attorneys in the private sector;
- (8) Comparison of wages, hours, and conditions of employment of judges with the wages, hours, and conditions of employment of persons performing comparable work for the State or county;
- (9) Interests and welfare of the public;
- (10) Present and future general economic condition of the State; and
- (11) Other factors normally or traditionally taken into consideration in the determination of compensation.

(c) By October 15 of each year preceding a fiscal biennium, the commission shall submit its recommendations in a report to the legislature, with copies to be submitted to the governor and chief justice. [At the next regular legislative session, the amounts recommended by the commission shall be submitted by the chief justice as part of the judiciary's proposed budget pursuant to the budgetary procedures specified in chapter 37 and section 601-2(c).] The salary amounts recommended by the commission shall become effective on July 1 of the following year, unless, at the regular legislative session following the submittal of the commission's recommendation, the legislature disapproves or modifies the recommendation, by a concurrent resolution adopted by a two-thirds vote of each house in joint session, within thirty days after the legislature convenes. The legislature shall appropriate the salary amount recommended, or as modified, as part of the judiciary's budget. Salary amounts in the budget as enacted shall take precedence over any inconsistent statutes.

3. *Recommendation 3: The Legislature should consider increasing the minimum number of years of service and age requirements for a judge to obtain full retirement benefits.*

As discussed in Chapter 4, the conventional wisdom insists that compensation is a significant factor in retaining experienced judges, who, on the whole, perform at a higher level by virtue of their experience. Such wisdom further holds that having experienced judges who make a career on the bench is not only consistent with but enhances the principle of judicial independence. Chief Justice Moon and others, expressing concern over the continuing loss of experienced judges from the bench, have urged pay raises for Hawaii's judges. However, as noted previously, Governor Cayetano has warned that a judicial pay increase without a concomitant adjustment to retirement benefits will only provide judges with a greater incentive to leave the bench.²⁶

Although the issue of whether retirement benefits should be adjusted is beyond the scope of this particular study, to the extent that the issue impacts the retention of experienced judges, the Bureau feels compelled to comment. After reviewing the other states' vesting requirements to obtain full retirement benefits (see Chapter 4), the Bureau concedes that Hawaii's minimum requirement of ten years of service for judges younger than age 55 or five years of service for

²⁶Benjamin J. Cayetano, Governor of Hawaii, Statement of Objections to House Bill No. 1393, Regular Session of 1997 (June 20, 1997).

judges age 55 or older is fairly generous in comparison to most states.²⁷ It is also generous compared to the vesting requirements for many other Hawaii public employees.²⁸ Thus, an increase in the required minimum number of years of service or of age to vest for full benefits may be reasonable. The Legislature could consider changing the vesting requirements for judges to achieve a balance between age and service requirements, with the number of years of service requirements descending as age increases. As an example, full vesting could be achieved after: age 55 with at least twenty-five years of service; age 60 with at least fifteen years of service; or at age 65 with at least five years of service. Another alternative would be to impose vesting requirements similar to those of class C members of the employees retirement system: members must have a minimum of ten years of credited service and have attained age 62 or have thirty years of credited service and have attained age 55. As the discussion in Chapter 4 reveals, any number of other options combining higher years of service and age for vesting are available from which the Legislature may choose.

With respect to Hawaii's actual retirement benefits, however, a comparison, albeit superficial, of these benefits with those of other states did not reveal that Hawaii's benefits are outrageously out of line with those offered elsewhere. Moreover, the Bureau submits that any reduction in actual retirement benefits may discourage qualified applicants from seeking the bench and may encourage sitting judges to return to the private sector and its offer of higher salaries to ensure that they and their families are provided for adequately. Accordingly, the Bureau would counsel that any steps toward adjusting judicial retirement benefits should be preceded by a comprehensive review of retirement benefits by qualified benefits specialists.

Conclusion

The present system for considering judicial salary increases in Hawaii does not work. It has resulted in sporadic, lump sum funding of judicial salaries that has failed to maintain reasonable salary levels. The denial of a judicial pay increase for nearly eight years has produced judicial salaries that are significantly under par. Moreover, the increasing cost of living in Hawaii has seriously eroded judicial buying power, resulting in financial distractions that threaten the exercise of independent and dispassionate judgment. The principle of judicial independence, which demands that the judiciary be free from outside pressures and influences, requires that there be an objective mechanism that removes the issue of judicial salaries from the political arena and that ensures reasonable increases are made to judicial salaries on a regular basis. Furthermore, judicial excellence cannot be preserved unless compensation levels are sufficient to attract qualified applicants to, and ensure qualified sitting judges remain on, the bench. The Bureau would reiterate that determining an appropriate level of judicial compensation is a complex task, involving a myriad of factors. The mechanisms discussed in this Chapter are intended to provide an objective means of making reasonable judicial salary adjustments on a regular basis. However, because the

²⁷See Haw. Rev. Stat. §88-73. These vesting requirements also apply to elective officers, the chief clerks and assistant clerks, and sergeant at arms and assistant sergeant at arms of either house of the Legislature.

²⁸See, for example, the vesting requirements of class C members who must have ten years of credited service and have attained age 62 or have thirty years of credited service and have attained age 55. Haw. Rev. Stat. §88-281.

SUMMARY AND RECOMMENDATIONS

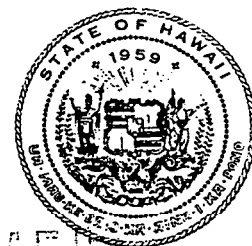
focus of each mechanism is different, implementation of no one mechanism, alone, is guaranteed to meet this goal adequately. Accordingly, it may be advisable to implement more than one of these mechanism, such as: longevity pay, to reward sitting judges and encourage them to remain on the bench, combined with either a salary escalator tied to the Consumer Price Index, to ensure all judicial salaries keep pace with inflation, or an authoritative Judicial Salary Commission, to review salaries periodically, to ensure salary levels are maintained at a reasonable level.

Appendix A

The Senate
The Nineteenth Legislature
of the
State of Hawaii

STATE CAPITOL
HONOLULU, HAWAII 96813

May 6, 1997



RECEIVED
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LEGISLATIVE
REFERENCE BUREAU

NORMAN MIZUGUCHI
PRESIDENT
ANDREW LEVIN
VICE PRESIDENT
LES IHARA, JR.
MIKE MCCARTNEY
MAJORITY LEADERS
WHITNEY ANDERSON
MINORITY LEADER

FIRST DISTRICT
MALAMA SOLOMON
SECOND DISTRICT
WAYNE METCALF
THIRD DISTRICT
ANDRE LEVIN
FOURTH DISTRICT
ROSALYN H. BAKER
FIFTH DISTRICT
JOE TANAKA
SIXTH DISTRICT
AVERY CHUMBLEY
SEVENTH DISTRICT
LEHUA FERNANDES SALLING
EIGHTH DISTRICT
SAM SLOW
NINTH DISTRICT
MATT MATSUNAGA
TENTH DISTRICT
LES IHARA, JR.
ELEVENTH DISTRICT
BRIAN TANIGUCHI
TWELFTH DISTRICT
CAROL FUKUNAGA
THIRTEENTH DISTRICT
ROD TAM
FOURTEENTH DISTRICT
SUZANNE CHUN OAKLAND
FIFTEENTH DISTRICT
NORMAN MIZUGUCHI
SIXTEENTH DISTRICT
NORMAN SAKAMOTO
SEVENTEENTH DISTRICT
DAVID IGE
EIGHTEENTH DISTRICT
RANDY IWASE
NINETEENTH DISTRICT
CALVIN KAWAMOTO
TWENTIETH DISTRICT
BRIAN KANNO
TWENTY-FIRST DISTRICT
JAMES AKI
TWENTY-SECOND DISTRICT
ROBERT BUNDA
TWENTY-THIRD DISTRICT
MIKE MCCARTNEY
TWENTY-FOURTH DISTRICT
MARSHALL IGE
TWENTY-FIFTH DISTRICT
WHITNEY T. ANDERSON
CHIEF CLERK
PAUL T. KAWAGUCHI

Mr. Wendell Kimura, Director
Office of the Legislative Reference Bureau
State Capitol
Honolulu, Hawaii 96813

Dear Mr. Kixnura:

I have the honor to transmit herewith Senate
Concurrent Resolution No. 2, S.Q. 1, which was
adopted on April 10, 1997 by the Senate of the
Nineteenth Legislature of the State of Hawaii,
Regular Session of 1997.

Sincerely yours,

PAUL T. KAWAGUCHI
Clerk of the Senate

Enclosure

SENATE CONCURRENT RESOLUTION

REQUESTING A STUDY TO ASSIST THE LEGISLATURE IN ESTABLISHING AN
APPROPRIATE SALARY STRUCTURE AND PAY INCREMENTS FOR LENGTH
OF CONTINUOUS CREDITABLE JUDICIAL SERVICE TO THE STATE.

1 WHEREAS, there is a paramount need to ensure that the most
2 highly qualified individuals are willing and able to serve in
3 the State's judicial branch without unreasonable economic
4 hardship; and

5
6 WHEREAS, the relationship between judicial compensation
7 and judicial retention is simple and direct; and

8
9 WHEREAS, insufficient compensation creates the risk that
10 judges will leave the bench, depriving the public of the
11 significant value of their experience; and

12
13 WHEREAS, judicial salaries and benefits must be such that,
14 when combined with other relevant factors such as the prestige
15 and honor of public service, the total compensation of a
16 judicial position is comparable to that offered by other career
17 opportunities in the legal profession; and

18
19 WHEREAS, the salary structure for judges and justices
20 should be based on realistic, objective standards and the
21 salary range at each court level should encourage the best and
22 brightest at all levels of the court system to remain on the
23 bench for long periods; and

24
25 WHEREAS, the Judicial Salary Commission of the State of
26 Hawai'i was established by the Legislature in Act 271, Session
27 Laws of Hawaii 1989, to review and recommend salaries of
28 justices and judges of all state courts and appointed judiciary
29 administrative officers;

30
31 WHEREAS, the Judicial Salary Commission submitted reports
32 to the respective legislatures during the 1992, 1994, 1995, and
33 1996 legislative sessions, citing in each report concerns
34 related to the eroding effects of inflation on judicial
35 salaries and suggesting annual judicial salary increases to
36 reflect increased costs of living, among other factors; and

1 WHEREAS, each report to the Legislature of the Judicial
 2 Salary Commission included data justifying salary increases for
 3 Hawaii's judges and justices to levels commensurate with the
 4 responsibilities, legal experience, and qualifications required
 5 to fulfill the constitutional and statutory mandates of
 6 Hawaii's laws; and

7
 8 WHEREAS, adequate judicial compensation for Hawaii's
 9 judges and justices affects every resident of the State, as
 10 stated by the American Bar Association in A Handbook on State
 11 Judicial Salaries, "...there is clearly a direct relationship
 12 between the level of judicial salaries, the competence of
 13 judges, and the quality of our justice system.."; and

14
 15 WHEREAS, as indicated in the American Bar Association's
 16 Standards for Judicial Compensation, "Fair and adequate
 17 compensation for all state court judges clearly is in the
 18 public interest, since an able and independent judiciary is at
 19 the heart of the democratic process."; and

20
 21 WHEREAS, without an objective, statutorily established
 22 mechanism that ensures fair and adequate judicial compensation,
 23 for all state judges and justices, judges are drawn into the
 24 potentially compromising and perpetual task of lobbying each
 25 legislature for increases in judicial salaries and improvements
 26 in benefits; and

27
 28 WHEREAS, lobbying of the Legislature by members of the
 29 judiciary for judicial salary increases is inconsistent with
 30 the traditional role of the courts as an independent and
 31 separate branch of government; and

32
 33 WHEREAS, the Judiciary's political neutrality and
 34 independence, in fact and in appearance, is fundamental to
 35 public support of the justice system; and

36
 37 WHEREAS, eight states have judicial salary increases
 38 indexed to changes in cost-of-living measures, such as the
 39 consumer price index, and four states have judicial salary
 40 increases tied to increases in compensation for other state
 41 civil service employees; and
 42

1 WHEREAS, it is incumbent on the whole government to
 2 maintain the highest level of public confidence in the State's
 3 judicial branch through highly qualified applicant pools,
 4 lengthy judicial tenures, and judicial independence; now,
 5 therefore,
 6

7 BE IT RESOLVED by the Senate of the Nineteenth Legislature
 8 of the State of Hawaii, Regular Session of 1997, the House of
 9 Representatives concurring, that the Legislative Reference
 10 Bureau conduct a study and make recommendations on an
 11 appropriate salary structure for all state justices and judges,
 12 including pay supplements by increments for length of
 13 continuous creditable service in the state judiciary; and
 14

15 BE IT FURTHER RESOLVED that the study include the
 16 feasibility of indexing judicial salary increases to the
 17 consumer price index or increases in compensation for other
 18 state civil service employees; and
 19

20 BE IT FURTHER RESOLVED that the Legislative Reference
 21 Bureau consult with the Judicial Salary Commission to obtain
 22 relevant information; and
 23

24 BE IT FURTHER RESOLVED that a report including findings
 25 and recommendations of the Legislative Reference Bureau, be
 26 submitted to the Legislature not later than sixty days prior to
 27 the convening of the 1998 Regular Session; and
 28

29 BE IT FURTHER RESOLVED that certified copies of this
 30 Concurrent Resolution be transmitted to the Director of the
 31 Legislative Reference Bureau, the members of the Judicial
 32 Salary Commission, and the Chief Justice of the Hawaii Supreme
 33 Court.

I hereby certify that the foregoing is a true
 and correct copy of Senate Concurrent Resolution
 No. SCR 2, SD1 was duly adopted by the Senate
 of the State of Hawaii on April 10, 1997,
 with the concurrence of the House of Representa-
 tives.

Dated: May 6, 1997

Carol T. Langford
 Assistant Clerk of the Senate

Appendix B

Section 78-18.3, Hawaii Revised Statutes

[§78-18.3] Prohibition on certain increases in salaries for certain state and county officers or employees. Any law to the contrary notwithstanding, neither the State nor any of the counties shall provide or pay to the following state or county officers or employees any adjustment or increase in the officer's or employee's respective salary or compensation where such adjustment or increase constitutes a mandatory adjustment or increase which is, directly or indirectly, dependent upon and related to negotiated salary adjustments or increases received under collective bargaining agreements by civil service or other public employees covered by collective bargaining: any elected or appointed officer or employee in the executive and judicial branches of state government and the executive branch of any county government (1) whose salary or compensation is fixed, limited, or otherwise specified by statute, ordinance, or other legislative enactment whether or not in express dollar amounts or express dollar amount ceilings; (2) who is not subject to chapters 76 and 77; and (3) who is excluded from collective bargaining and not subject to chapter 89C. [L 1982, c 129, pt of §34A; gen ch 1985]

Appendix C

STATEWIDE INTEGRATED COMPENSATION
STRUCTURE PROPOSED IN THE
REPORT OF
PUBLIC OFFICERS AND EMPLOYEES COMPENSATION REVIEW COMMISSION
PRESENTED TO THE 12th HAWAII STATE LEGISLATURE
February 28, 1983

Table II

PROPOSED HAWAII STATE INTEGRATED SALARY SYSTEM

<u>Grade</u>	<u>Job Title</u>	<u>Salary Range</u>
I	Agriculture Coordinating Committee - Special Assistant	\$26,400-32,600
II	*Marine Affairs Coordinator	30,400-35,600
III	Federal Programs Coordinator (not an active position) Broadcast Authority - Executive Director Credit Unions - Deputy (not an active position) Ethics Commission - Executive Director *Children & Youth - Director	34,400-42,600
IV	Bandmaster (City & County) Director of Municipal Reference & Records Center (C & C) Director of Information and Complaint (City & County) Stadium Authority - Manager Office of Aging - Director Paroling Authority - Chairman Consumer Protection - Director Insurance Commissioner District Superintendent (DOE)	40,400-48,600
V	Hawaii Housing Authority - Executive Director Labor & Industrial Relations Appeals Board - Chairman Office of Collective Bargaining - Chief Negotiator HPERB - Chairman Public Utilities Commission - Chairman Assistant Superintendent (DOE) Deputy Department Heads (Neighbor Islands) *Ombudsman	43,400-52,600
VI	Deputy Department Heads (City & County) Department Heads (Neighbor Islands) Deputy City Clerk (City & County) Deputy Director of Council Services (City & County) Corporation Counsel, First Deputy (City & County) Prosecuting Attorney, First Deputy (City & County)	48,400-56,600

<u>Grade</u>	<u>Job Title</u>	<u>Salary Range</u>
VII	Deputy Department Heads Department Heads (City & County) Managing Director (Neighbor Islands) City Clerk (City & County) Director of Council Services (City & County) Deputy Superintendent of Schools Public Defender Deputy Administrative Director (Judiciary) Corporation Counsel (City & County) Prosecuting Attorney (City & County) Legislative Reference Bureau - Director Legislative Auditor (State) District Court Family Judge District Court Judge Deputy Managing Director (City & County) Assistant Adjutant General (Army) (\$61,778) Assistant Adjutant General (Air) (\$64,666)	\$50,400-60,600
VIII	Department Heads (State) Superintendent of Schools Administrative Director (Judiciary) Adjutant General (\$72,578)	56,400-65,600
IX	Managing Director (City & County) Mayor (Neighbor Islands) Circuit Court Judge Administrative Director of the State Associate Judge, Intermediate Court of Appeals	60,400-72,600
X	Mayor (City & County) Chief Judge, Intermediate Court of Appeals Associate Justice	70,400-84,600
XI	*Lt. Governor Chief Justice President, University of Hawaii	74,400-86,600
XII		78,400-92,600
XIII	Governor	89,400-106,600

Appendix D.1

NORMALIZED JUDICIAL SALARY COMPARISON, 1996: HIGHEST COURT

Actual Salary - July, 1996 *			Normalized Salary **			
Rank	State	Amount	Rank	State	Amount	P.C.P.I. ***
1	New Jersey	\$132,250	1	Alabama	\$152,391	\$18,781
2	California	131,065	2	Arkansas	141,986	17,429
3	Illinois	126,579	3	California	136,832	23,699
4	New York	125,000	4	Mississippi	135,879	16,531
5	Pennsylvania	119,750	5	Utah	133,715	18,223
6	Michigan	118,758	6	Georgia	133,621	21,278
7	Florida	116,244	7	South Carolina	132,243	18,788
8	Alabama	115,695	8	Louisiana	128,374	18,827
9	Georgia	114,932	9	Pennsylvania	127,255	23,279
10	Delaware	113,700	10	Tennessee	127,085	20,376
11	Connecticut	113,042	11	Illinois	126,451	24,763
12	Alaska	109,908	12	Florida	125,486	22,916
13	Washington	109,880	13	Kentucky	125,066	18,612
14	Massachusetts	107,730	14	Michigan	124,744	23,551
15	Rhode Island	107,535	15	Arizona	122,509	20,421
16	Virginia	107,373	16	Indiana	122,103	21,273
17	Missouri	105,717	17	Missouri	120,924	21,627
18	Indiana	105,000	18	Oklahoma	119,520	18,152
19	Tennessee	104,676	19	Iowa	118,439	21,012
20	Ohio	104,200	20	West Virginia	117,373	17,915
21	Maryland	104,100	21	Ohio	117,056	22,021
22	Arizona	101,130	22	Delaware	116,594	24,124
23	Wisconsin	100,690	23	New York	115,460	26,782
24	Iowa	100,600	24	North Carolina	115,262	20,604
25	South Carolina	100,436	25	Washington	114,988	23,639
26	Arkansas	100,035	26	New Mexico	114,636	18,055
27	Utah	98,500	27	Rhode Island	114,123	23,310
28	Louisiana	97,700	26	Wisconsin	114,056	21,839
29	North Carolina	96,000	29	Texas	113,409	20,654
30	New Hampshire	95,623	30	New Jersey	113,369	28,658
31	Nebraska	94,891	31	Virginia	112,565	23,597
32	Texas	94,686	32	Alaska	112,435	24,182
33	Minnesota	94,395	33	Nebraska	108,161	21,703
34	Kentucky	94,095	34	Idaho	106,767	19,264
35	HAWAII	93,780	35	Maine	106,056	20,527
36	Kansas	93,226	36	Kansas	105,669	21,825
37	Colorado	91,000	37	North Dakota	102,658	18,663
38	Mississippi	90,800	36	Oregon	101,975	21,736
39	Oregon	89,600	39	Minnesota	101,010	23,118
40	Maine	88,003	40	Maryland	99,326	25,927
41	Oklahoma	87,700	41	Massachusetts	96,727	26,994
42	Nevada	85,000	42	Wyoming	98,622	21,321
43	Wyoming	85,000	43	South Dakota	96,979	19,506
44	West Virginia	85,000	44	Colorado	96,002	23,449
45	New Mexico	83,593	45	Vermont	94,605	20,927
46	Idaho	83,142	46	New Hampshire	94,053	25,151
47	Vermont	80,031	47	HAWAII	93,780	24,738
46	North Dakota	77,448	48	Connecticut	92,282	30,303
49	South Dakota	76,466	49	Montana	92,187	18,482
50	Montana	66,674	50	Nevada	84,065	25,013

* National Center for State Courts, "State Court Report," July 1996.
 ** Normalized Salary = [(P.C.P.I. Hawaii)/(P.C.P.I. State * A)]x(Salary State * A).
 *** P.C.P.I. is Per Capita Personal Income. Source: United States Department of Commerce, Bureau of Economic Anal
 "Per Capita Personal Income by State, 1989-1995," May 15, 1996.

MEDIAN	\$100,236	\$114,762
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Source: From the Hawaii Judicial Salary Commission's Report on Judicial Salaries (Honolulu: October 1996).

Appendix D.2

NORMALIZED JUDICIAL SALARY COMPARISON, 1996: INTERMEDIATE APPELLATE COURTS

Actual Salary - July, 1996 *			Normalized Salary **			
Rank	State	Amount	Rank	State	Amount	P.C.P.I. * -
1	New Jersey	\$124,200	1	Alabama	\$150,969	\$18,781
2	California	122,993	2	Arkansas	137,496	17,429
3	Illinois	119,133	3	Georgia	132,773	21,278
4	New York	119,000	4	California	128,281	23,699
5	Pennsylvania	116,000	5	Utah	127,674	18,223
6	Alabama	114,615	6	Mississippi	125,703	16,531
7	Georgia	114,203	7	South Carolina	125,632	18,788
8	Michigan	114,007	8	Pennsylvania	123,270	23,279
9	Florida	110,432	9	Louisiana	121,542	18,827
10	Connecticut	105,111	10	Tennessee	121,170	20,376
11	Washington	104,448	11	Kentucky	119,960	18,612
12	Alaska	103,824	12	Michigan	119,753	23,551
13	Virginia	102,004	13	Arizona	119,592	20,421
14	Tennessee	99,804	14	Florida	119,212	22,916
15	Massachusetts	99,690	15	Illinois	119,013	24,763
16	Missouri	98,727	16	Iowa	113,848	21,012
17	Arizona	96,722	17	Missouri	112,929	21,627
18	Maryland	97,300	18	Texas	112,211	20,654
19	Ohio	97,050	19	Oklahoma	111,070	18,152
20	Arkansas	96,872	20	Indiana	110,474	21,273
21	Iowa	96,700	21	North Carolina	110,459	20,604
22	South Carolina	96,415	22	New York	109,918	26,782
23	Indiana	95,000	23	Washington	109,304	23,639
24	Wisconsin	94,804	24	Ohio	109,024	22,021
25	Utah	94,050	25	New Mexico	108,807	18,055
26	Texas	93,686	26	Wisconsin	107,389	21,839
27	Louisiana	92,500	27	Virginia	106,936	23,597
28	North Carolina	92,000	28	New Jersey	106,468	28,868
29	Kentucky	90,254	29	Alaska	106,211	24,182
30	Kansas	89,898	30	Idaho	105,483	19,264
31	HAWAII	89,780	31	Kansas	101,897	21,825
32	Minnesota	88,945	32	Oregon	99,699	21,736
33	Oregon	87,600	33	Nebraska	95,461	21,703
34	Colorado	86,500	34	Minnesota	95,178	23,118
35	Mississippi	84,000	35	Maryland	92,838	25,927
36	Nebraska	83,749	36	Massachusetts	91,358	26,994
37	Idaho	82,142	37	Colorado	91,255	23,449
38	Oklahoma	81,500	38	HAWAII	89,780	24,738
39	New Mexico	79,413	39	Connecticut	85,808	30,303
40	Delaware	0	40	New Hampshire	0	25,151
41	Maine	0	41	Nevada	0	25,013
42	Montana	0	42	Delaware	0	24,124
43	Nevada	0	43	Rhode Island	0	23,310
44	New Hampshire	0	44	Wyoming	0	21,321
45	North Dakota	0	45	Vermont	0	20,927
46	Rhode Island	0	46	Maine	0	20,527
47	South Dakota	0	47	South Dakota	0	19,506
48	Vermont	0	48	North Dakota	0	18,663
49	West Virginia	0	49	Montana	0	18,482
50	Wyoming	0	50	West Virginia	0	17,915

* National Center for State Courts, "State Court Report," July 1996.

** Normalized Salary = [(P.C.P.I. Hawaii)/(P.C.P.I. State "A")]x(Salary State "A").

*** P.C.P.I. is Per Capita Personal Income. Source: United States Department of Commerce, Bureau of Economic Analysis
"Per Capita Personal Income by State, 1989-1995," May 15, 1996.

MEDIAN	96872	110474
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Source: From the Hawaii Judicial Salary Commission's Report on Judicial Salaries (Honolulu: October 1996).

Appendix D.3

NORMALIZED JUDICIAL SALARY COMPARISON, 1996: TRIAL COURTS

Actual Salary - July, 1996 *			Normalized Salary **			
Rank	State	Amount	Rank	State	Amount	P.C.P.I. ***
1	New Jersey	\$115,000	1	Arkansas	\$132,997	\$17,429
2	New York	113,000	2	South Carolina	125,632	18,788
3	Illinois	109,321	3	Utah	121,565	18,223
4	Delaware	108,100	4	Mississippi	121,513	16,531
6	California	107,390	5	Arizona	116,675	20,421
6	Michigan	104,863	6	Tennessee	115,939	20,376
7	Florida	104,619	7	Kentucky	114,855	18,612
8	Pennsylvania	104,000	8	Louisiana	114,709	18,827
9	Alaska	101,628	9	Florida	112,937	22,916
10	Connecticut	100,411	10	California	112,098	23,699
11	Virginia	99,678	11	Texas	111,013	20,654
12	Washington	99,015	12	Delaware	110,851	24,124
13	Rhode Island	96,817	13	Pennsylvania	110,518	23,279
14	Arizona	96,314	14	West Virginia	110,468	17,915
15	Massachusetts	95,710	15	Michigan	110,148	23,551
16	Tennessee	95,496	16	Illinois	109,211	24,763
17	South Carolina	95,415	17	Iowa	108,314	21,012
18	Arkansas	93,702	18	Alabama	106,185	18,781
19	Maryland	93,600	19	Missouri	104,620	21,627
20	Texas	92,686	20	Virginia	104,498	23,597
21	Iowa	92,000	21	North Carolina	104,456	20,604
22	Missouri	91,463	22	New York	104,376	26,782
23	Wisconsin	90,661	23	Alaska	103,965	24,182
24	New Hampshire	89,646	24	Washington	103,618	23,639
25	Utah	89,550	25	New Mexico	103,368	18,055
26	Nebraska	87,775	26	Rhode Island	102,748	23,310
27	Louisiana	87,300	27	Wisconsin	102,696	21,839
28	North Carolina	87,000	28	Oklahoma	102,212	18,152
29	HAWAII	86,780	29	Maine	100,299	20,527
30	Kentucky	86,413	30	Idaho	100,069	19,264
31	Indiana	85,000	31	Nebraska	100,050	21,703
32	Minnesota	83,494	32	Indiana	98,846	21,273
33	Maine	83,226	33	New Jersey	98,582	28,858
34	Georgia	82,488	34	Georgia	95,901	21,278
35	Colorado	82,000	35	North Dakota	94,737	18,663
36	Oregon	81,6730	36	Oregon	92,870	21,736
37	Mississippi	81,200	37	Kansas	91,863	21,825
38	Kansas	81,046	38	South Dakota	90,568	19,506
39	Alabama	80,615	39	Montana	90,366	18,482
40	West Virginia	80,000	40	Vermont	89,865	20,927
41	Nevada	79,000	41	Minnesota	89,345	23,118
42	Ohio	78,450	42	Wyoming	89,340	21,321
43	Idaho	77,926	43	Maryland	89,308	25,927
44	Wyoming	77,000	44	New Hampshire	86,174	25,151
45	Vermont	76,021	45	Ohio	88,129	22,021
46	New Mexico	75,443	46	Massachusetts	87,711	26,994
47	Oklahoma	75,000	47	HAWAII	86,780	24,738
48	North Dakota	71,472	48	Colorado	86,508	23,449
49	South Dakota	71,413	49	Connecticut	81,971	30,305
50	Montana	67,513	50	Nevada	78,131	25,013

* National Center for State Courts, "State Court Report," July, 1996.

** Normalized Salary = [(P.C.P.I. Hawaii)/(P.C.P.I. State | AJ)]x(Sahy State -A=).

*** P.C.P.I. is Per Capita Personal Income. Source: United States Department of Commerce, Bureau of Economic Analysis.

Per Capita Personal Income by State, 1989-1995, May 15, 1996.

MEDIAN	\$88,663	\$103,058
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Source: From the Hawaii Judicial Salary Commission's Report on Judicial Salaries (Honolulu: October 1996).

Appendix E

FRINGE BENEFIT RATE FOR FY 98

BENJAMIN J. GAYETANO
GOVERNOR



EARL I. ANZAI
DIRECTOR

NEAL MIYAMURA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P. O. BOX 143
HONOLULU, HAWAII 96810-0143

EMPLOYER RETIREMENT SYSTEM
HAWAII PUBLIC EMPLOYEES HEALTH FUND
HAWAII FINANCE AND DEVELOPMENT
CORPORATION
OFFICE OF THE PUBLIC DEFENDER
PUBLIC UTILITIES COMMISSION
RENTAL HOUSING TRUST FUND COMMISSION

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
INFORMATION AND COMMUNICATION
SERVICES DIVISION

July 1, 1997

TO: All Department Heads
FROM: Earl I. Anzai *EIA*
Director of Finance
SUBJECT: Fringe Benefit Rate for FY 98

A composite fringe benefit rate of 36.97% has been approved by the U-S. Department of Health and Human Services (DHHS) for use during FY 98. The composite rate consists of the following fringe benefit items and computed rates:

Item	Rate
Pension Accumulation	14.49%
Pension Administration	.06%
Retiree Health Insurance	5.99%
Employees' Health Fund	7.05%
Workers' Compensation	.57%
Unemployment Compensation	1.16%
Social Security	7.65%
Composite Rate	36.97%

Please note that the rate for Social Security includes 1.45% for Medicare. The rate will be formally published when the Statewide Cost Allocation Plan for FY 98 is approved by the DHHS.

If there are any questions, please have your staff contact Mr. James Nakamura, Administrator of this department's Budget, Program Planning and Management Division, at 586-1530.

Appendix F

State of Hawai'i
Judicial Salary Commission
August 28, 1997

Charlotte Carter-Yamauchi
Research Attorney
Legislative Reference Bureau
State of Hawaii
State Capitol
Honolulu, Hawaii 968 13

Dear Ms. Carter-Yamauchi:

The Judicial Salary Commission is in receipt of your letter dated June 26, 1997, offering the Commission the opportunity to provide input on your study pursuant to Senate Concurrent Resolution No. 2, S.D. 1, Requesting a Study to Assist the Legislature in Establishing an Appropriate Salary Structure and Pay Increments for Length of Continuous Creditable Judicial Service to the State.

As you know, the **Judicial** Salary Commission undertook its own study of judicial salaries prior to submitting its Report to the Legislature in October, 1996, and a letter to the members of the Nineteenth Legislature in January, 1997, specifying the Commission's recommendations for a judicial salary increase of fifteen percent distributed over three fiscal years. Both documents state our unequivocal conclusion that Hawaii's judges and justices are significantly underpaid relative to jurists in other states, on the federal bench, and in private practice. We take this opportunity to re-iterate that conclusion.

In our report, we also noted that sporadic, lump sum raises simply put off the issue of maintaining judicial salaries at a level commensurate with judicial responsibilities and at a level to attract and retain the best to serve in Hawaii's Judiciary. Previous Commissions have advocated an automatic salary escalator, and we repeat our strong support for the adoption of such an escalator for Hawaii's judicial salaries. Simple fairness dictates that Hawaii's judges and justices should receive salary increases at rates that match the increases granted other public employees. Nationally, the two most common escalators are tied to increases in cost-of-living indices and increases in civil service salaries. In light of the Governor's veto of the judicial salary increase passed by the 1997 Legislature, we are increasingly persuaded that an automatic salary escalator is imperative.

The Commission also submits that an experienced judiciary is the cornerstone to judicial excellence and judicial independence- **In** our opinion, judges, like other state employees who commit a significant portion of their professional careers to public service, should be compensated commensurate with the length of their service to the State. Retention increases, or pay supplements for length of judicial service, are an idea whose time has come.

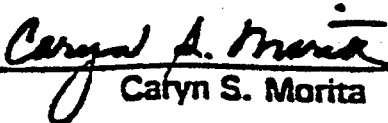
A final note: According to **the** most recent figures available from the National Center for State Courts, by **July 1, 1997**, the salaries of Hawaii's **Supreme** Court justices had fallen from 35th to 38th; when Hawaii's **cost-of-living** relative to other states is taken into account, **our** justices **now** rank 45th in the nation. We are increasingly concerned about the erosion in the value of the salaries of Hawaii's judges and justices, and we are persuaded by their actions in **the 1997** session that the members of the Legislature share our concern. It is time to implement these long overdue and urgently needed adjustments to the **salaries** and salary structure of Hawaii's dedicated judges and justices.

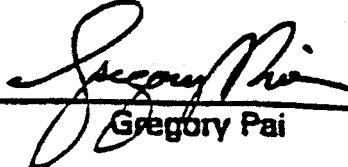
Thank you for the opportunity to comment on S.C.R. No. 2, S.D. **1**. We are hopeful that reason and fair play will prevail when next the Legislature and the Governor consider judicial salary increases.

Respectfully,


George Chaplin, Co-Chair


Lawrence M. Johnson


Caryn S. Morita


Gregory Pai

Appendix G.1

NORMALIZED JUDICIAL SALARY COMPARISON, 1997: HIGHEST COURT

Fall 1997 Rank	Fall ISS7 State	Fall 1997 Actual Wages	1997 NW Rank	1997 State	Normalized* Salary	P.C.P.I.
1	Florida	133,609	1	Alabama	145,999	20,131
2	New Jersey	132,260	2	Mississippi	142,089	17,575
3	California	131,065	3	Arkansas	141,373	18,959
4	Illinois	130,250	4	Florida	140,096	24,226
5	New York	125,000	5	South Carolina	135,703	19,977
6	Pennsylvania	122,864	6	Louisiana	133,500	19,664
7	Michigan	121,727	7	Georgia	132,675	22,977
8	Delaware	121,200	8	California	131,385	25,346
9	Georgia	120,009	9	Arizona	129,400	21,363
10	Alabama	115,695	10	Indiana	129,262	22,601
11	Connecticut	115,303	11	Utah	128,997	19,595
12	Indiana	115,000	12	Kentucky	126,763	19,797
13	Washington	112,078	13	Pennsylvania	125,841	24,803
14	Virginia	112,644	14	Tennessee	124,792	21,949
15	Alaska	111,552	15	Texas	124,272	22,282
16	Rhode Island	110,761	16	Michigan	123,967	24,945
17	Texas	109,000	17	Illinois	123,245	26,848
18	Arizona	108,816	18	Oklahoma	122,185	19,544
19	Missouri	106,763	19	Missouri	120,038	23,022
20	Tennessee	107,629	20	West Virginia	118,906	18,160
21	Massachusetts	107,730	21	Iowa	117,989	22,306
22	Ohio	107,350	22	Ohio	116,269	23,457
23	Maryland	107,300	23	Alaska	116,152	24,398
24	South Carolina	106,713	24	North Carolina	114,773	22,265
25	Arkansas	105,507	25	Rhode Island	114,511	24,572
26	Iowa	103,600	26	Washington	113,044	25,107
27	Louisiana	103,336	27	New Mexico	112,939	18,803
28	Wisconsin	100,699	28	Virginia	112,697	25,212
29	North Carolina	100,320	29	Delaware	111,056	27,724
30	Utah	99,500	30	Idaho	110,734	19,637
31	Kentucky	98,800	31	Maine	109,916	21,011
32	Mississippi	98,300	32	Wisconsin	109,688	23,320
33	Nebraska	97,739	33	New York	108,821	29,181
34	Kansas	96,489	34	Nebraska	108,346	22,917
35	New Hampshire	95,623	35	New Jersey	107,222	31,334
36	Minnesota	94,395	36	Kansas	105,815	23,165
37	Oklahoma	94,000	37	Oregon	103,052	23,074
38	Colorado	94,000	38	Montana	101,928	19,214
39	Hawaii	93,780	39	Wyoming	106,229	21,544
40	Oregon	93,600	40	North Dakota	99,105	29,446
41	Maine	90,909	41	Maryland	98,698	27,618
42	Idaho	86,468	42	South Dakota	95,758	20,895
43	Nevada	85,000	43	Vermont	93,915	22,470
44	West Virginia	85,000	44	Hawaii	93,780	25,404
45	Wyoming	85,000	45	Minnesota	93,442	25,663
46	New Mexico	83,593	46	Colorado	92,963	25,704
47	Vermont	83,072	47	Massachusetts	91,363	29,792
48	North Dakota	79,771	48	New Hampshire	91,272	26,615
49	South Dakota	78,762	49	Connecticut	86,470	33,875
50	Montana	77,092	50	Nevada	83,016	26,011

Survey of Judicial Salaries Report, Volume 22, Number 2, Fall 1997.

PCPI is Per capita Personal Income. Normalized Salary = ((P.C.P.I. Hawaii)/(P.C.P.I. State "A")) x (Salary State "A")

Source: US Department of Commerce, Bureau of Economic Analysis, "PCPI by State, 1991-1996.", release date of September 19, 1997

* The "normalizing" technique is used to eliminate the disparity caused by differences in per capita income among the states. The formula used is as follows: (Per Capita Income in Hawaii) divided by (Per Capita Income in State "A") multiplied by (Actual Judicial Salary in State "A"). Comparisons of "normalized" salaries should be viewed with some caution since "per capita income" alone is considered to be an incomplete assessment of a state's cost of living index.

Source: Provided by the Judiciary.

Appendix G.2

NORMALIZED JUDICIAL SALARY COMPARISON, 1997: INTERMEDIATE APPELLATE COURT

Fall 1997 Rank	Fall 1997 State	Fall 1997 Actual Wage	1997 Nw Rank	1997 State	1997 Normalized* Wage	P.C.P.I.
1	New Jersey	124,200	1	Alabama	144,637	20,131
2	California	122,893	2	Arkansas	136,903	18,959
3	Illinois	122,666	3	Mississippi	132,260	17,575
4	Florida	120,240	4	South Carolina	136,614	19,977
5	Pennsylvania	119,016	5	Louisiana	126,614	19,664
6	New York	119,000	6	Arizona	126,318	21,363
7	Alabama	114,615	7	Florida	126,067	24,226
6	Michigan	114,007	a	Indiana	123,642	22,601
9	Indiana	110,000	9	California	123,174	25,346
10	Georgia	103,246	10	Utah	121,931	19,595
11	Connecticut	107,214	11	Pennsylvania	121,900	24,603
12	Washington	106,537	12	Kentucky	121,607	19,797
13	Virginia	106,442	13	Georgia	120,785	22,977
14	Arizona	106,226	14	Tennessee	116,966	21,949
15	Alaska	105,334	15	Texas	118,059	22,282
16	Texas	103,550	16	Michigan	116,105	24,946
17	Tennessee	102,304	17	Illinois	115,995	26,343
18	South Carolina	102,711	18	Oklahoma	114,336	19,644
19	Arkansas	102,171	19	Iowa	113,433	22,306
20	Missouri	101,691	20	Missouri	112,102	23,022
21	Maryland	100,300	21	North Carolina	109,991	22,205
22	Ohio	99,950	22	Alaska	109,729	24,396
23	Massachusetts	99,690	23	Idaho	109,453	19,837
24	Iowa	99,600	24	Ohio	103,246	23,457
26	Louisiana	97,928	25	Washington	107,465	25,187
26	North Carolina	96,146	26	New Mexico	107,292	18,303
27	Wisconsin	94,604	27	Virginia	107,253	26,212
23	Kentucky	94,767	23	New York	103,597	29,101
29	Utah	94,050	29	Wisconsin	103,276	23,320
30	Kansas	93,044	30	Nebraska	102,926	22,917
31	Nebraska	92,652	31	Kansas	102,037	23,165
a2	Mississippi	91,500	32	Oregon	100,740	23,074
a3	Oregon	91,500	a3	New Jersey	100,695	31,334
34	Hawaii	89,780	34	Maryland	92,269	27,613
35	Colorado	89,500	35	Hawaii	89,780	25,404
a6	Minnesota	36,946	36	Colorado	88,455	25,704
37	Oklahoma	63,000	37	Minnesota	36,047	25,663
a6	Idaho	66,468	38	Massachusetts	86,007	29,792
a9	New Mexico	79,413	39	Connecticut	80,403	33,876
40	Nevada	0	40	Nevada	0	26,011
4 1	Maine	0	41	Vermont	0	22,470
42	West Virginia	0	42	West Virginia	0	16,160
43	Vermont	0	43	Wyoming	0	21,644
44	Wyoming	0	44	Delaware	0	27,724
45	Montana	0	45	Maine	0	21,011
46	North Dakota	0	46	New Hampshire	0	26,615
47	New Hampshire	0	47	Rhode Island	0	24,572
43	Rhode Island	0	48	North Dakota	0	20,448
49	Delaware	0	49	Montana	0	19,214
50	South Dakota	0	53	South Dakota	0	20,895

Survey of Judicial Salaries Report, Volume 22, Number 2, Fall 1997.

PCPI is Per Capita Personal Income. Normalized Salary = [(P.C.P.I. Hawaii)/(P.C.P.I. State "A")]x(Salary State "A")

Source: US Department of Commerce, Bureau of Economic Analysis, "PCPI by State, 1991-1996.", release date of September 19, 1997

* The "normalizing" technique is used to eliminate the disparity caused by differences in per capita income among the states. The formula used is as follows: (Per Capita Income in Hawaii divided by (Per Capita Income in State "A") multiplied by (Actual Judicial Salary in State "A"). Comparisons of "normalized" salaries should be viewed with some caution since "per capita income" alone is considered to be an incomplete assessment of a state's cost of living index.

Source: Provided by the Judiciary.

Appendix G.3

NORMALIZED JUDICIAL SALARY COMPARISON, 1997: TRIAL COURTS

Fall 1997 Rank	Fell 1997 State	Fall 1997 Actual Wage	1997 NW Rank	1997 State	1997 Normalized* Wage	P.C.P.I.
1	Delaware	115,300	1	Arkansas	132,424	18.959
2	New Jersey	116,099	2	South Carolina	128,917	19,977
3	New York	113,093	3	Mississippi	128,213	17,675
4	Illinois	112,491	4	Arizona	123,237	21.363
5	Michigan	199,267	5	Alaska	122,664	21.363
6	Florida	107,758	6	Louisiana	119,527	19,664
7	California	107,390	7	Utah	117,264	19,695
8	Pennsylvania	166,704	8	Kentucky	116,432	19,797
9	Virginia	104,014	9	Georgia	114,744	22,977
10	Georgia	103,762	10	Tennessee	113,848	21,949
11	Arizona	103,634	11	Florida	112,998	24,226
12	Alaska	103,152	12	West Virginia	111,912	18,169
13	Connecticut	102,470	13	Texas	111,845	22,262
14	South Carolina	101,377	14	Michigan	111,267	24,946
15	Washington	100,996	15	Pennsylvania	109,290	24,863
16	Rhode Island	99,722	16	Iowa	107,966	22,396
17	Arkansas	96,828	17	California	107,636	25,346
18	Tennessee	98,364	18	Oklahoma	106,557	19,544
19	Texas	99,100	19	Illinois	106,441	26,848
20	Maryland	96,500	29	Delaware	105,651	27,724
21	Massachusetts	95,710	21	Virginia	104,866	25,212
22	Iowa	94,896	22	North Carolina	104,013	22,266
23	Missouri	94,116	23	Maine	103,951	21,011
24	Louisiana	92,520	24	Missouri	103,663	23,022
25	Ohio	91,966	25	Idaho	103,787	19,837
26	North Carolina	90,915	26	Rhode Island	103,099	24,672
27	Kentucky	96,734	27	New Mexico	101,928	18,803
28	West Virginia	90,661	26	Washington	101,865	25,187
29	Utah	90,450	29	Alabama	101,731	29,131
30	Nebraska	90,408	30	Indiana	101,162	22,601
31	Indiana	90,000	31	Nebraska	100,219	22,917
32	New Hampshire	89,646	32	Ohio	99,582	23,467
33	Mississippi	88,700	33	Wisconsin	98,763	23,320
34	Hawaii	66,780	34	New York	98,374	29,181
36	Maine	86,973	36	Montana	96,261	19,214
36	Oregon	85,300	36	Oregon	93,914	23,074
37	Colorado	85,000	37	New Jersey	93,206	31,344
36	Kansas	83,883	36	Kansas	91,991	23,165
39	Minnesota	83,494	39	North Dakota	91,468	29,448
40	Oklahoma	82,000	40	Wyoming	90,796	21,344
41	Idaho	81,043	41	South Dakota	89,429	20,896
42	Alabama	89,616	42	Vermont	89,214	22,470
43	West Virginia	80,000	43	Maryland	88,764	27,818
44	Nevada	79,000	44	Hawaii	86,780	25,404
45	Vermont	78,919	46	New Hampshire	85,567	26,615
46	Wyoming	77,000	46	Colorado	84,968	26,764
47	New Mexico	75,443	47	Minnesota	82,651	25,863
48	North Dakota	73,618	48	Massachusetts	81,613	29,792
49	South Dakota	73,666	49	Nevada	77,156	26,011
50	Montana	72,042	50	Connecticut	76,846	33,875

Survey of Judicial Salaries Report, Volume 22, Number 2, Fall 1997.

PCPI is Per Capita Personal Income. Normalized Salary = [(P.C.P.I. Hawaii)/(P.C.P.I. State "A")] x (Salary State "A")

Source: US Department of Commerce, Bureau of Economic Analysis, "PCPI by State, 1991-1996," release date of September 19, 1997

* The "normalizing" technique is used to eliminate the disparity caused by differences in per capita income among the states. The formula used is as follows: (Per Capita Income in Hawaii) divided by (Per Capita Income in State "A") multiplied by (Actual Judicial Salary in State "A"). Comparisons of "normalized" salaries should be viewed with some caution since "per capita income" alone is considered to be an incomplete assessment of a state's cost of living index.

Source: Provided by the Judiciary.

Appendix H

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PROJECTION OF JUDICIAL SALARIES IF TIED TO CHANGES IN THE CPI

JUSTICES/JUDGES SALARIES

WHAT THEY WOULD LOOK LIKE BASED ON CHANGING HAWAII CPI-U

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1998</u>	<u>1997</u>	<u>1998</u>
<u>CPI-U Index (Adjusted)</u>	100	107.2	112.3	115.9	119.1	121.7	123.6	125.5	128
<u>Annual Increase from Base</u>		7.2%	5.1%	3.6%	3.2%	2.6%	1.9%	1.9%	2.5%
<u>Supreme Court</u>	<u>Base Pay</u>								
Chief Justice	94,780	101,604	106,438	109,850	112,883	115,347	117,148	118,949	121,318
Associate Justice	93,780	100,532	105,315	108,691	111,692	114,130	115,912	117,694	120,038
<u>intermediate Court of Appeals</u>									
Chief Judge	91,280	97,852	102,507	105,794	108,714	111,088	112,822	114,556	116,838
Associate Judge	89,780	96,244	100,823	104,055	106,928	109,262	110,968	112,674	114,918
<u>Circuit Courts</u>									
Judge	86,780	93,028	97,454	100,578	103,355	105,611	107,260	108,909	111,078
<u>Family Courts</u>									
Circuit Judge	86,780	93,028	97,454	100,578	103,355	105,611	107,260	108,909	111,078
Judge	81,780	87,668	91,839	94,783	97,400	99,526	101,080	102,634	104,678
<u>District Courts</u>									
Judge	81,780	87,668	91,839	94,783	97,400	99,526	101,080	102,634	104,678
PerDiem Judges (Dct/Fam)	81,780								

Source: Provided by the Judiciary.

Appendix I

PROJECTION OF JUDICIAL SALARIES IF TIED TO AVERAGE NEGOTIATED SALARY ADJUSTMENTS RECEIVED BY COLLECTIVE BARGAINING UNIT 13

JUSTICES/JUDGES SALARIES

WHAT THEY WOULD LOOK LIKE BASED ON AVERAGE NEGOTIATED ADJUSTMENTS (CB 13)

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
<u>Average Annual Increase</u>		4.9%	4.1%	2.0%	4.0%	2.0%	6.25%		
<u>Supreme Court</u>	<u>Base Pay</u>								
Chief Justice	94,780	99,424	103,500	105,570	109,793	111,989	118,988		
Associate Justice	93,780	98,375	102,408	104,456	108,634	110,807	117,732		
<u>Intermediate Court of Appeals</u>									
Chief Judge	91,280	95,753	99,879	101,673	105,740	107,855	114,596		
Associate Judge	89,780	94,179	98,040	100,001	104,001	106,081	112,711		
<u>Circuit Courts</u>									
Judge	86,780	91,032	94,764	96,659	100,525	102,536	108,945		
<u>Family Courts</u>									
Circuit Judge	86,780	91,032	94,764	96,659	100,525	102,536	108,945		
Judge	81,780	85,787	89,304	91,090	94,734	96,629	102,668		
<u>District Courts</u>									
Judge	81,780	85,787	89,304	91,090	94,734	96,629	102,668		
PerDiem Judges (Dct/Fam)	81,780								

1) Based on H.G.E.A. Bargaining Unit 13 Professional and Scientific Salary Schedule

Source: Provided by the Judiciary.

Appendix J

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LONGEVITY STEP SALARY SCHEDULE BASED ON PRESENT PAY LEVELS

The Judiciary State of Hawaii Salary Schedule

	1) <u>Base Pay</u>	2) Step A 3)	3) Step B	3) Step C	4) Step D	4) Step E	4) Step F	Step G	Step H	Step I
<u>Supreme Court</u>										
Chief Justice	94,780	98,571	102,514	106,615	110,679	115,314	119,927	124,724	129,713	134,901
Associate Justice	93,780	97,531	101,432	105,490	109,709	114,098	118,662	123,408	128,344	133,478
<u>Intermediate Court of Appeals</u>										
Chief Judge	91,280	94,931	98,728	102,678	106,785	111,056	115,498	120,118	124,923	129,920
Associate Judge	89,780	93,371	97,108	100,990	105,030	109,231	113,600	118,144	122,370	127,785
<u>Circuit Courts</u>										
Judge	88,780	90,251	93,881	97,618	101,520	105,581	109,804	114,197	118,784	123,515
<u>Family Courts</u>										
Circuit Judge	86,780	90,251	93,681	97,818	101,520	105,581	109,804	114,197	118,764	123,515
Judge	81,780	85,051	88,463	91,991	95,871	99,498	103,478	107,081	111,922	116,398
<u>District Courts</u>										
Judge	81,780	85,051	88,453	91,991	95,671	99,498	103,478	107,617	111,922	118,398
Per Diem Judges (Dct/Fam)	81,780									

- 1) Base pay and step amounts adjusted periodically based on legislative action (current base pay reflects salaries approved as of 1990)
- 2) Each step provides for a four percent increase over the previous step
- 3) Step movement occurs on the 2nd, 4th, and 6th anniversary of appointment as a permanent judge
- 4) Step movement occurs on the 3rd anniversary of the award of the current step

Source: Offered by the Judiciary for discussion purposes.

Appendix K

LONGEVITY STEP SALARY SCHEDULE REFLECTING A ONE-TIME 15% PAY INCREASE TO EXISTING SALARY LEVELS

The Judiciary
State of Hawaii
Salary Schedule

	¹⁾ Proposed Base Pay	²⁾ ³⁾ Step A	³⁾ Step B	³⁾ Step C	⁴⁾ Step D	⁴⁾ Step E	⁴⁾ Step F	Step G	Step H	Step I
<u>Supreme Court</u>										
Chief Justice	108,997	113,357	117,891	122,607	127,511	132,812	137,918	143,433	149,170	155,137
Associate Justice	107,847	112,181	118,847	121,313	128,166	131,212	138,481	141,919	147,598	153,500
<u>Intermediate Court of Appeals</u>										
Chief Judge	104,972	109,171	113,538	118,079	122,802	127,714	132,823	138,136	143,661	149,408
Associate Judge	103,247	107,377	111,672	116,139	120,784	125,616	130,640	135,866	141,301	146,953
<u>Circuit Courts</u>										
Judge	99,797	103,789	107,940	112,258	116,748	121,418	126,275	131,326	136,579	142,042
<u>Family Courts</u>										
Circuit Judge	99,797	103,789	107,940	112,258	116,748	121,418	126,275	131,326	136,579	142,042
Judge	94,047	97,809	101,721	105,790	110,022	114,423	118,999	123,759	128,710	133,858
<u>District Courts</u>										
Judge	94,047	97,809	101,721	105,790	110,022	114,423	118,999	123,759	128,710	133,858
PerDiem Judges (Dct/Fam)	94,047									

- 1) Base pay and step amounts adjusted periodically based on legislative action (adjusted to reflect proposed one-time 15% catch-up pay increase)
- 2) Each step provides for a four percent increase over the previous step
- 3) Step movement occurs on the 2nd, 4th, and 6th anniversary of appointment as a permanent judge
- 4) Step movement occurs on the 3rd anniversary of the award of the current step

Source: Offered by the Judiciary for discussion purposes.

Appendix L

BASIC FEATURES OF LONGEVITY PAY STEP SCHEDULE

LONGEVITY PAY STEPS FOR JUSTICES/JUDGES

Basic Features

SEPARATE TRACKS FOR EACH LEVEL OF JUSTICES/JUDGES

Assumes **only** a limited number of justices/judges move from court to court.

SAVE PAY PROVISION FOR **JUSTICES/JUDGES** THAT DO CHANGE COURTS

Transition would be from current pay step to the step on the new court that exceeds current pay level.

PAY INCREASE FOR EACH ADDITIONAL TERM AS A JUDGE

Provides for an automatic permanent one step increase each time a District Court (District/Family) level judge is appointed to a new term and a two step increase each time a Circuit Court or above level justice/judge is appointed for a new term.

STEP MOVEMENTS

During the first six years of service, justices/judges would qualify for a step increase on the second, fourth and sixth **anniversary** of their first appointment. Thereafter, they would qualify for a step increase on the third anniversary of the previous permanent step movement.

IMPLEMENTATION AND EFFECTIVE DATE

Current justices/judges will automatically move to the step in their court program that is reflective of their total years on the bench effective July 1, 1998.

There will be no retroactive pay related to the initial step placement of current judges.

BASE PAY AND STEP AMOUNTS

Salary schedules amounts will automatically be adjusted to reflect the most current base pay amount as approved by the Legislature.

ONE-TIME CATCH UP PAY INCREASE -(15%)

Based on salary commission's recommendation to the nineteenth legislative session.

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source: Offered by the Judiciary.

Appendix M

SALARY SCHEDULE FOR COLLECTIVE BARGAINING UNIT 13, EFFECTIVE 7/1/95 (1993-1997 CONTRACT AGREEMENT)

STATE OF HAWAII
DEPARTMENT OF PERSONNEL SERVICES
SALARY SCHEDULE

EXHIBIT C

EFFECTIVE DATE: 07/01/95

BARGAINING UNIT: 13 Professional & Scientific, Non-supervisor

		STEP C	STEP D	STEP E	STEP F	STEP G	STEP H	STEP I	STEP J	STEP K	STEP L
SR24	ANN	36,636	38,100	39,624	41,208	42,852	44,556	46,356	48,192	50,136	52,152
	MON	3,053	3,175	3,302	3,434	3,571	3,713	3,863	4,016	4,178	4,346
	8HR	140.88	146.56	152.40	158.48	164.80	171.36	178.32	185.36	192.80	200.56
	HRLY	17.61	18.32	19.05	19.81	20.60	21.42	22.29	23.17	24.10	25.07
SR25	ANN	38,100	39,624	41,208	42,852	44,556	46,356	48,192	50,136	52,152	54,228
	MON	3,175	3,302	3,434	3,571	3,713	3,863	4,016	4,178	4,346	4,519
	8HR	146.56	152.40	158.48	164.80	171.36	178.32	185.36	192.80	200.56	208.56
	HRLY	18.32	19.05	19.81	20.60	21.42	22.29	23.17	24.10	25.07	26.07
SR26	ANN	39,624	41,208	42,852	44,556	46,356	48,192	50,136	52,152	54,228	56,388
	MON	3,302	3,434	3,571	3,713	3,863	4,016	4,178	4,346	4,519	4,699
	8HR	152.40	158.48	164.80	171.36	178.32	185.36	192.80	200.56	206.56	216.88
	HRLY	19.05	19.81	20.60	21.42	22.29	23.17	24.10	25.07	26.07	27.11
SR27	ANN	41,208	42,852	44,556	46,356	48,192	50,136	52,152	54,228	56,388	58,644
	MON	3,434	3,571	3,713	3,863	4,016	4,178	4,346	4,519	4,699	4,887
	8HR	158.48	164.80	171.36	178.32	185.36	192.80	200.56	208.56	216.88	225.52
	HRLY	19.81	20.60	21.42	22.29	23.17	24.10	25.07	26.07	27.11	28.19
SR28	ANN	44,556	46,356	48,192	50,136	52,152	54,228	56,388	58,644	60,984	63,420
	MON	3,713	3,863	4,016	4,178	4,346	4,519	4,699	4,887	5,082	5,285
	8HR	171.36	178.32	185.36	192.80	200.56	208.56	216.88	225.52	231.56	243.92
	HRLY	21.42	22.29	23.17	24.10	25.07	26.07	27.11	28.19	29.32	30.49
SR29	ANN	46,356	48,192	50,136	52,152	54,228	56,388	58,644	60,984	63,420	65,964
	MON	3,863	4,016	4,178	4,346	4,519	4,699	4,887	5,082	5,285	5,497
	8HR	178.32	185.36	192.80	200.56	208.56	216.88	225.52	234.56	243.92	253.68
	HRLY	22.29	23.17	24.10	25.07	26.07	27.11	28.19	29.32	30.49	31.71
SR30	ANN	48,192	50,136	52,152	54,228	56,388	58,644	60,984	63,420	65,964	68,616
	MON	4,016	4,178	4,346	4,519	4,699	4,887	5,082	5,285	5,497	5,718
	8HR	185.36	192.80	200.56	208.56	216.88	225.52	234.56	243.92	253.68	263.92
	HRLY	23.17	24.10	25.07	26.07	27.11	28.19	29.32	30.49	31.71	32.99
SR31	ANN	50,136	52,152	54,228	56,388	58,644	60,984	63,420	65,964	68,616	71,340
	MON	4,178	4,346	4,519	4,699	4,887	5,082	5,285	5,497	5,718	5,945
	8HR	192.80	200.56	208.56	216.88	225.52	234.56	243.92	253.68	263.92	274.40
	HRLY	24.10	25.07	26.07	27.11	28.19	29.32	30.49	31.71	32.99	34.30
SC01	ANN	52,152	54,228	56,388	58,644	60,984	63,420	65,964	68,616	71,340	74,208
	MON	4,346	4,519	4,699	4,887	5,082	5,285	5,497	5,718	5,945	6,184
	8HR	200.56	208.56	216.88	225.52	234.56	243.92	253.68	263.92	274.40	285.44
	HRLY	25.07	26.07	27.11	28.19	29.32	30.49	31.71	32.99	34.30	35.68
SC02	ANN	54,228	56,388	58,644	60,984	63,420	65,964	68,616	71,340	74,208	77,172
	MON	4,519	4,699	4,887	5,082	5,285	5,497	5,718	5,945	6,184	6,431
	8HR	208.56	216.88	225.52	234.56	243.92	253.68	263.92	274.40	285.44	296.80
	HRLY	26.07	27.11	28.19	29.32	30.49	31.71	32.99	34.30	35.68	37.10
SC03	ANN	56,388	58,644	60,984	63,420	65,964	68,616	71,340	74,208	77,172	80,256
	MON	4,699	4,887	5,082	5,285	5,497	5,718	5,945	6,184	6,431	6,688
	8HR	216.88	225.52	234.56	243.92	253.68	263.92	274.40	285.44	296.80	308.64
	HRLY	27.11	28.19	29.32	30.49	31.71	32.99	34.30	35.68	37.10	38.58