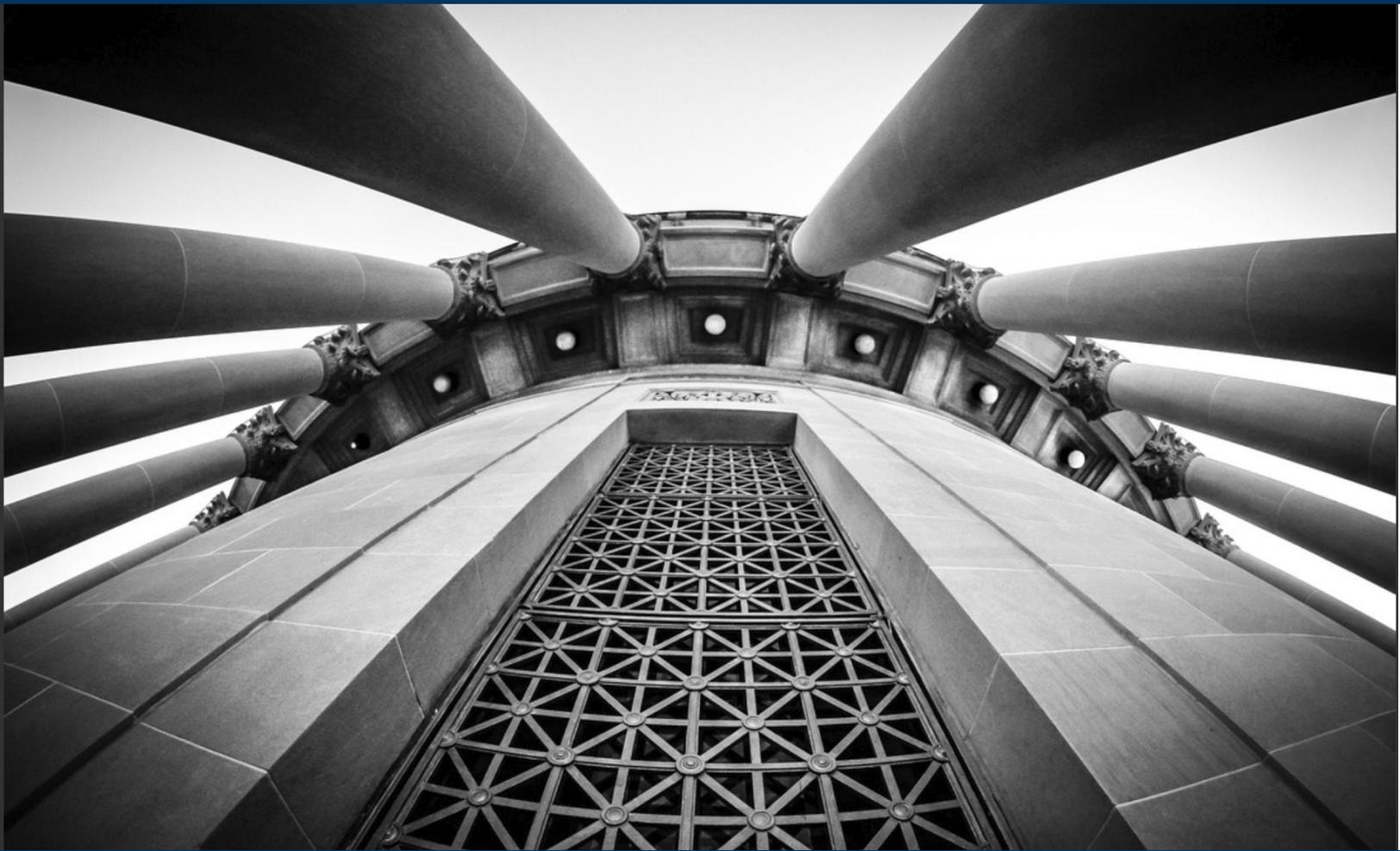




# REPORT OF THE WEST VIRGINIA JUDICIAL COMPENSATION COMMISSION

2018





# West Virginia Judicial Compensation Commission

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# THE WEST VIRGINIA JUDICIARY AND THE WEST VIRGINIA JUDICIAL COMPENSATION COMMISSION

## A. History of the West Virginia Judiciary

The Constitution of the State of West Virginia vests the state’s judicial power in a supreme court of appeals, circuit courts, and such other courts that the legislature might establish.<sup>1</sup> When West Virginia separated from Virginia, its court system mirrored that of the mother state. The Constitution of 1863 established the West Virginia Supreme Court of Appeals (with three justices) and 11 circuit courts, and it provided several justices of the peace for every county.

The most important modern event for the West Virginia judiciary was the ratification of the Judicial Reorganization Amendment on November 5, 1974. The amendment ended the justice of the peace system and established a unified court system, unifying all state courts, except municipal courts, into a single system supervised and administered by the West Virginia supreme court. The amendment organized the West Virginia judiciary into three levels: supreme court, circuit courts, and magistrate courts. In November 2000, the voters passed a constitutional amendment to allow the Legislature to create separate family courts. The new family courts went into effect on January 1, 2002.

## B. History and Function of the West Virginia Judicial Compensation Commission

A basic requirement to ensuring that citizens and businesses can manage their affairs effectively is a stable and predictable judiciary. Therefore, to effectively and efficiently address the needs of the State of West Virginia and its citizens, it is essential to have and support a competent judiciary.

The Judicial Compensation Commission (“Commission”) was created by the 82<sup>nd</sup> Legislature, effective June 10, 2016. It is composed of five members, the Dean of the West Virginia University College of Law, two members appointed by the President of the Senate, and two members appointed by the Speaker of the House. Appointed members serve four-year terms.

The Commission is responsible for making a report to the West Virginia Legislature no later than September 1 of each year recommending the appropriate compensation to be paid by the state for all supreme court justices, circuit court judges, family court judges, and magistrates. In recommending the appropriate compensation for the justices, judges, and magistrates, the Commission is required to consider the factors listed in West Virginia Code §4-2C-3.

The Commission believes that its purpose is to provide a market analysis of the fair and appropriate compensation of the judicial officers included in the statute. The Commission understands that it is not within its scope to consider changes to the organizational structure, numbers of positions, or jurisdictional scope of the judiciary, or other financial issues unrelated to compensation. The

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<sup>1</sup>W.Va. Const. Art. VIII.

Commission will provide the Legislature with the best market analysis possible for its consideration in making decisions regarding judicial compensation.

The minutes of the Commission’s meetings are available on the Commission’s webpage at: [http://www.wvlegislature.gov/Interims/judicial\\_comp.cfm](http://www.wvlegislature.gov/Interims/judicial_comp.cfm).

## CURRENT JUDICIAL COMPENSATION

The current compensation for supreme court justices, circuit court judges, family court judges, and magistrates is set forth in the West Virginia Code. The judicial compensation statutes were amended in 2006 to provide incremental pay increases for those justices and judges over a five-year period. On July 1, 2011, the last pay increase under the 2006 amendment took effect, raising the salaries of supreme court justices from \$121,000 to \$136,000; circuit court judges from \$116,000 to \$126,000; and family court judges from \$82,500 to \$94,500.<sup>2</sup> The increases did not apply to magistrates.

Until January 1, 2017, magistrate salaries were staggered based on county population. But, by amendment to West Virginia Code § 50-1-3 during the 2013 First Extraordinary Session of the Legislature, magistrate salaries had to be equalized on or before January 1, 2017, at \$57,500. It appears that many magistrates received salary increases due to this equalization, but other magistrates had earned that amount since 2013. *For current judicial compensation as of August 2018, see chart below.*

<b>CURRENT JUDICIAL COMPENSATION</b>	
<b>Supreme Court Justices</b>	<b>\$136,000</b>
<b>Circuit Court Judges</b>	<b>\$126,000</b>
<b>Family Court Judges</b>	<b>\$94,500</b>
<b>Magistrates</b>	<b>\$57,500</b>

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<sup>2</sup>W.Va. Code §§ 51-1-10a, 51-2-13, and 51-2A-6.

## FACTORS REQUIRED TO BE CONSIDERED BY THE COMMISSION

By law, the Commission is required to consider the following eight factors in making its recommendations for the appropriate salaries of the state's judicial officials:

- 1) The skill and experience required of the particular judgeship at issue;
- 2) The value of comparable service performed by justices and judges, as determined by reference to judicial compensation in other states and in the federal government;
- 3) The value of comparable service performed in the private sector including, but not limited to, private judging, arbitration, and mediation;
- 4) The compensation of attorneys in the private sector;
- 5) The cost of living;
- 6) The compensation presently received by other public officials in the state;
- 7) The level of overall compensation adequate to attract the most highly qualified individuals in the state, from a diversity of life and professional experiences, to serve the judiciary without unreasonable hardship and with judicial independence unaffected by financial concerns; and
- 8) Any other information the commission may find relevant in its mission to determine the appropriate compensation for the state's judicial officers.<sup>3</sup>

The following is a summary of the Commission's analysis of the data collected for purposes of determining the proper salaries for the state's justices, judges, and magistrates.

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<sup>3</sup>W.Va. Code § 4-2C-3(b).

## FACTOR 1: THE SKILL AND EXPERIENCE REQUIRED OF JUSTICES, CIRCUIT COURT JUDGES, FAMILY COURT JUDGES, AND MAGISTRATES

The minimum requirements for supreme court justices, circuit court judges, family court judges, and magistrates are set forth in the West Virginia Constitution and the West Virginia Code. Justices must have been admitted to practice law for at least ten years prior to their election.<sup>4</sup> Circuit court and family court judges must have been admitted to practice law for at least five years prior to their election.<sup>5</sup> Magistrates are required to be at least twenty-one years of age; to have a high school education or its equivalent; and to not have been convicted of a misdemeanor involving moral turpitude or of any felony. Magistrates are not required to be licensed to practice law, and, indeed, the West Virginia Constitution expressly prohibits the legislature and judiciary from enacting laws or rules that would require magistrates to be so licensed.

A review of the data shows a very high level of skill and experience in the current judiciary. In fact, the average years of admission of the justices and judges far exceed the minimums required by law to hold those positions. The five current justices of the West Virginia Supreme Court of Appeals have been admitted to practice law in this State for an average of more than thirty-five years, ranging from twenty to fifty-one years of admission. The seventy-two current circuit court judges have been admitted to practice law in this State for an average of thirty-four years, ranging from twelve to fifty-six years of admission. The forty-six current family court judges have been admitted to practice law in this State for an average of twenty-six years, ranging from nine to forty-three years of admission. This review demonstrates that individuals with significant experience are, and remain, attracted to the bench. It is essential that such talent continue to be attracted to the bench, as well as be retained, and it is the view of the Commission that judicial compensation should be adequate to do so.

## FACTOR 2: THE VALUE OF COMPARABLE SERVICE PERFORMED BY JUSTICES AND JUDGES, AS DETERMINED BY REFERENCE TO JUDICIAL COMPENSATION IN OTHER STATES AND IN THE FEDERAL GOVERNMENT

**Other States** – Data regarding judicial salaries in each state is readily available for comparison. This data is collected by the National Center for State Courts (“NCSC”) and is published in January and July of each year.<sup>6</sup> The NCSC also provides information on the “normalized” salaries of judges. This normalized data incorporates the cost of living in each state and then compares the salaries, which allows for an apples-to-apples comparison of salaries between states by adjusting salaries in each state by a cost of living factor to determine the purchasing power of that salary in a given state.

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<sup>4</sup>W.Va. Const. Art. VIII § 7.

<sup>5</sup>W.Va. Const. Art. VIII §§ 7 and 16; W.Va. Code § 51-2A-4.

<sup>6</sup>See <https://www.ncsc.org/~media/Microsites/Files/Judicial%20Salaries/Judicial-Salary-Tracker-Jul-2018.ashx>

For its comparison of compensation in other states, the Commission focused on salaries in the surrounding states and those states with the most similar population. *These figures are listed in the charts below.*

**Salaries of Judges in West Virginia’s Surrounding States as of July 1, 2018**

State	Highest Court Salary - Rank	Intermediate Appellate Court Salary - Rank	General – Jurisdiction Court	General Jurisdiction Using COLA
West Virginia	\$136,000 - 51	N/A	\$126,000 - 50	\$126,184 - 42
Kentucky	\$138,890 - 48	\$133,299 - 39	\$127,733 - 48	\$136,003 - 34
Ohio	\$164,000 - 34	\$152,850 - 30	\$140,550 - 38	\$142,340 - 23
Maryland	\$181,433 - 18	\$168,633 - 20	\$159,433 - 23	\$124,721 - 44
Virginia	\$197,827 - 10	\$181,610 - 10	\$171,120 - 13	\$156,748 - 9
Pennsylvania	\$207,203 - 6	\$195,978 - 5	\$180,299 - 9	\$161,236 - 7

**Salaries of Judges in Similarly Populated States as of July 1, 2018**

State	Highest Court Salary - Rank	Intermediate Appellate Court Salary - Rank	General – Jurisdiction Court	General Jurisdiction Using COLA
West Virginia	\$136,000 - 51	N/A	\$126,000 - 50	\$126,184 - 42
New Mexico	\$139,819 - 47	\$132,838 - 40	\$126,187 - 49	\$119,526 - 50
Nebraska	\$173,694 - 26	\$165,009 - 22	\$160,667 - 21	\$161,527 - 6
Idaho	\$151,400 - 41	\$141,400 - 36	\$135,400 - 41	\$140,920 - 24
Hawaii	\$227,664 - 4	\$210,780 - 4	\$205,080 - 3	\$137,560 - 30

West Virginia’s justices have the lowest salaries in the country, ranking 51<sup>st</sup><sup>7</sup>, and circuit court judges are currently ranked 50<sup>th</sup>. Factoring in the cost of living, however, raises West Virginia to 42<sup>nd</sup> in the country.

To determine the national trends in judicial compensation, the Commission compared the salary data contained in Factor 2 of the Commission’s 2017 Report with the July 1, 2018, salary data cited above. The mean and median increase in salary for Highest Courts, which are equivalent to the West Virginia Supreme Court of Appeals, and General Jurisdiction Courts, which are equivalent to West Virginia’s circuit courts, totaled 3.11% during the 2017 – 2018 timeframe. The Commission concluded that this information was important to, and should be incorporated in, the current report’s findings.

<sup>7</sup> The data includes all 50 states and the District of Columbia.

It is also useful to compare West Virginia judicial salaries to the mean and median judicial salaries of the ten states listed above. *These mean and median figures are listed in the following chart.*

West Virginia, Mean, and Median	Highest Court Salary	Intermediate Appellate Court Salary	General – Jurisdiction Court	General Jurisdiction Using COLA
<b>West Virginia</b>	\$136,000	N/A	\$126,000	\$126,184
<b>Mean Salary</b>	\$171,793	\$164,710	\$153,247	\$140,677
<b>Median Salary</b>	\$168,847	\$165,009	\$149,992	\$139,240

As a part of its analysis of total compensation of judicial officers, the Commission also considered facts regarding each state’s judicial retirement plan in its analysis. Attachment A to this report contains information regarding the type of retirement benefit plans offered to judges, their required contributions to the plans, and the amount of benefits that a judge can expect to receive upon retirement. Upon comparing West Virginia’s judicial retirement benefits with those of the surrounding states, the Commission concludes that those retirement benefits are fair and comparable to the other states.

The Commission also sought information with which to compare West Virginia’s family court salaries. Due to the unique nature of the position, West Virginia’s family courts judges do not have any nationally comparable judges. However, the Court has provided information to the Commission that West Virginia’s family law judges are the only judges in the nation whose position requires a law degree, yet pays less than \$100,000 per year. The Commission concludes that this information is relevant to its analysis.

The NCSC also gathers information about magistrate courts (or their equivalent). West Virginia is one of only twelve states that do not require magistrate court judges to have a law degree or be licensed to practice in the state. Of those twelve states, only four have fixed salaries. The other states have salaries that are set locally, based upon workload, or are tied to another county official's salary. Of the three salaries set by statute, the average salary is \$71,788. Because of the wide variation in methods to determine magistrate salaries, the Commission concludes that the information available results in a speculative average and should be given limited value to its overall analysis.

**Federal Government** – The salaries of federal justices, judges, and magistrates far exceed the salaries of West Virginia state justices, judges, and magistrates. While the Commission has considered federal judicial salaries in its analysis, the Commission has chosen to rely more heavily on state judicial salaries in its recommendations. Due to the inherent differences between state and federal government, federal judicial salaries do not carry the same weight as judicial salaries in other states, particularly those in other states similarly situated to our own. The Commission does note, however, that judicial salaries at

the federal level have increased annually since 2013, and that such regular increases may help attract and retain quality federal judicial appointees. *See the following chart.*

Year	District Judges	Circuit Judges	Associate Justices	Chief Justice
2018	\$208,000	\$220,600	\$255,300	\$267,000
2017	\$205,100	\$217,600	\$251,800	\$263,300
2016	\$203,100	\$215,400	\$249,300	\$260,700
2015	\$201,100	\$213,300	\$246,800	\$258,100
2014	\$199,100	\$211,200	\$244,400	\$255,500
2013	\$174,000	\$184,500	\$213,900	\$223,500

### FACTOR 3: VALUE OF COMPARABLE SERVICES PERFORMED IN THE PRIVATE SECTOR, INCLUDING PRIVATE JUDGING, ARBITRATION, AND MEDIATION

The Commission requested information from the American Arbitration Association (AAA) regarding pay information private sector arbitrators. According to AAA, there is not good “salary” information on arbitrators, because most arbitrators are engaged in other types of private legal work and handle arbitrations as only a portion of their full-time practice. However, AAA indicated that the standard rate for arbitrators in West Virginia is \$300 per hour.

The same barrier to identifying regional mediator salaries also exists, as there are only a handful of attorneys in West Virginia who dedicate their practice full-time to mediation. Among these mediators, a rate of \$230-400 per hour is charged. The lower rates were reported by a Morgantown mediator, and the higher rate was attributed to a Charleston-area mediator.

After reviewing the information received regarding both arbitrator and mediator compensation, the Commissioners determined that it was not sufficiently helpful and should be given very limited weight in its overall analysis.

## FACTOR 4: THE COMPENSATION OF ATTORNEYS IN THE PRIVATE SECTOR

The Commission reviewed data from several sources regarding compensation of attorneys in the private sector. First, the Commission reviewed data collected by the Department of Labor’s Bureau of Labor Statistics (BLS) regarding wages of West Virginia attorneys.<sup>8</sup> According to the BLS’s May 2017 data, attorneys in West Virginia earned an annual mean wage of \$95,220. However, this information averages all attorney salaries, regardless of experience level.

Obtaining information regarding salary levels of attorneys in private practice in West Virginia based on years of experience is more difficult. Information collected by the National Association of Law Placement (NALP) does provide some insight, however. NALP compiles data on attorney salaries for attorneys with up to eight years of practice experience, but not for attorneys with more than eight years of practice experience. Also, while NALP does not have data specific to West Virginia, it does collect information on a regional basis. NALP’s “South” region includes the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Washington D.C., and West Virginia.

The average years of practice experience among members of the West Virginia bench greatly exceeds the eight-year limit of the NALP data, and the NALP data covering West Virginia is for a geographic region that is significantly larger than West Virginia. Nonetheless, this data does provide a relevant, if not clearly precise, benchmark for the Commission to use in its analysis.

NALP’s South region data is reported both with salaries from the largest metropolitan cities of Atlanta, Baltimore, Charlotte, Dallas, Houston, Miami, Nashville, Washington D.C., and Wilmington, and without those cities. Because large city attorney salaries tend to be significantly higher than those in smaller cities, and because West Virginia does not have cities as large as those listed in this NALP region, the Commission believes that NALP data that excludes salaries from these metropolitan areas is more relevant to the Commission’s work. The average salary for attorneys with eight years of practice experience reported by NALP for the South region, minus the largest city salaries, is \$150,304.

NALP’s South region data is also separated by law firm size. In West Virginia, most “big law” firms fall into NALP’s 51-250 lawyer firm category. The average salary for attorneys with eight years of practice experience reported by NALP for the South region, minus the large city salaries, in firms of 51-250 attorneys, is \$146,522. The Commission recognizes and appreciates that some lawyers in smaller firms may make significantly higher salaries than their private practice counterparts in larger firms—and in fact the higher average salary (including smaller firm attorneys) reflects this. However, nationally (and regionally), private practice attorneys in larger firms tend to make, on average, more than their counterparts in smaller firms, and this may be relevant to the Commission’s analysis.

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<sup>8</sup> See [https://www.bls.gov/oes/current/oes\\_wv.htm#23-0000](https://www.bls.gov/oes/current/oes_wv.htm#23-0000).

**NALP Private Practice Salary Data for Attorneys in Private Practice  
with Eight Years of Practice Experience**

<b>NALP South Region: Average Salary for Attorneys with 8 Years of Practice Experience</b>	\$150,304
<b>NALP South Region: Average Salary for Attorneys with 8 Years of Practice Experience, Minus Large Cities, in Firms of 51-250 Attorneys</b>	\$146,522

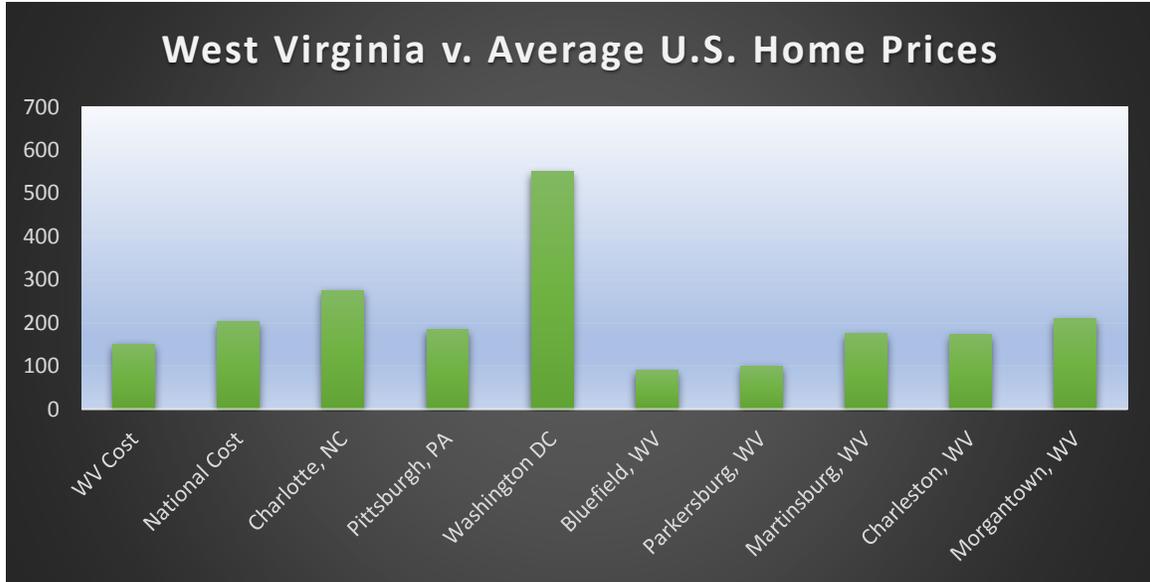
**FACTOR 5: COST OF LIVING**

The Commission considered cost of living information obtained from the West Virginia Department of Commerce. The State of West Virginia enjoys a low cost of living compared to neighboring states and the national average. This includes lower costs for housing, property taxes, and electricity and other services.

West Virginia remains a leader in low-cost electricity, with rates one-third lower than the national average. The state’s industrial rates are second lowest among states east of the Mississippi River, according to the U.S. Energy Administration.

The average home price in West Virginia is 38.5 % below the national average and one third that of the Washington, D.C., area. A typical 2,200-square-foot, 4-bedroom, 2-bath home in West Virginia costs about \$208,571, compared to \$292,491 in Pennsylvania or \$381,314 in Maryland, according to the 2011 Coldwell Banker Home Price Comparison Index. Factor 2, which compares judicial salaries of the states, includes cost of living data into those comparisons. According to the NCSC’s July 1, 2018 report, West Virginia’s cost of living makes the salary of its’ circuit court judges slightly more competitive, placing those salaries at 42<sup>nd</sup> in the country.

The Commission also considered information on median values of homes in the United States and around the region. *See the chart below.*



#### FACTOR 6: THE COMPENSATION PRESENTLY RECEIVED BY OTHER PUBLIC OFFICIALS IN THE STATE

The Commission is required by statute to consider the compensation from the state presently received by other public officials in the state. Those public officials are not defined by the statute. Thus, the Commission reviewed information regarding the highest paid West Virginia state employees, constitutional officers, and other department heads.

A survey of the 2017 salaries of other public officials and workers in the state, with the exception of higher education, shows that in that year only 33 public officials and workers were paid more than supreme court justices, and only 42 public officials and workers were paid more than circuit court judges. Those individuals with salaries higher than justices and circuit court judges included the governor (with an annual salary of \$150,000) and twenty-two medical doctors working for the Divisions of Health or Rehabilitative Services. Public officials with salaries lower than supreme court justices and circuit court judges included the treasurer and auditor.

As noted in the discussion of statutory Factor 2 in this report, the Commission believes that it is essential that judicial salaries be set at levels that adequately attract and retain future generations.

**FACTOR 7: LEVEL OF COMPENSATION THAT IS ADEQUATE TO ATTRACT THE MOST HIGHLY QUALIFIED INDIVIDUALS, FROM A DIVERSITY OF LIFE AND PROFESSIONAL EXPERIENCES, TO SERVE IN THE JUDICIARY WITHOUT UNREASONABLE ECONOMIC HARDSHIP AND WITH JUDICIAL INDEPENDENCE UNAFFECTED BY FINANCIAL CONCERNS**

The Commission viewed the analysis required by the first six factors to be relevant to the analysis of the seventh factor. Based on those analyses, the Commission concludes that regular, periodic adjustments in compensation are both necessary and appropriate in order to attract and retain the most highly qualified individuals, from a diversity of life and professional experiences, to serve in the judiciary without unreasonable economic hardship and with judicial independence unaffected by financial concerns.

Attracting judges from a diversity of life and professional experiences is necessary in order to have a state judiciary with broad and deep experiences that are reflective of our society as a whole. Having a judiciary that is not affected by financial concerns is also essential. The rule of law—and thus the political and social fabric of our society—is imperiled if the citizens of our state do not see the judiciary as qualified and experienced, and also if judges in our state cannot serve without financial hardship and the risk that their judicial independence might be compromised by financial concerns.

**Therefore, the Commission recommends that judicial salaries be increased as detailed in the Conclusions and Recommendations section, during the next legislative session.**

**FACTOR 8: ANY OTHER INFORMATION THE COMMISSION MAY FIND RELEVANT IN ITS MISSION TO DETERMINE THE APPROPRIATE COMPENSATION FOR THE STATE’S JUDICIAL OFFICERS**

The Commission also considered information provided and presented by members of the judiciary. At the Commission’s August 24, 2017 meeting, the Administrative Director of the West Virginia Supreme Court of Appeals, (Hon. Gary Johnson), two circuit court judges (Hon. Derek C. Swope and Hon. John A. Hutchison) and one family court judge (Hon. Kenneth D. Ballard) presented information to the Commission regarding judicial compensation for supreme court justices, circuit court judges, and family court judges. No magistrate representative appeared. The Commission has considered the judiciary’s input on these issues, which included the following information:

*JSC 2017 Report:* In a report prepared by the Judicial Salary Commission (“JSC”) for the Commission’s August 24, 2017, meeting, the JSC compiled data on judicial workloads, salary histories, and comparative salary studies for supreme court justices and circuit court judges in this and other jurisdictions. According to the report, the current salary levels for supreme court justices and circuit court judges, which have not increased since 2011, are below the national average and are below that of comparable judicial officials in the contiguous states of Pennsylvania, Maryland, Virginia, and Ohio. In addition to other information, the report included a compilation of several workload studies that showed

an upward trend in the workload for circuit court judges in West Virginia. While no similar information was available for supreme court justices, the report indicated that the West Virginia Supreme Court of Appeals ranked number 1 in the nation in the amount of incoming cases per 100,000 people. The report provided “potential salaries” in the amount of \$181,996.00 for supreme court justices and \$168,616.00 for circuit court judges.

*West Virginia Family Court Judges Workload Needs Assessment Study – Final Report 2014:* Provided by Judge Ballard to the Commission, the 2014 final report indicated that, at that time, West Virginia needed 50.29 family court judges to handle the volume and complexity of the workload. It is also of note that Judge Ballard stated in his presentation that West Virginia family court judges are the only judicial officers in the United States of America that are required to hold a law degree and earn less than \$100,000 per year.

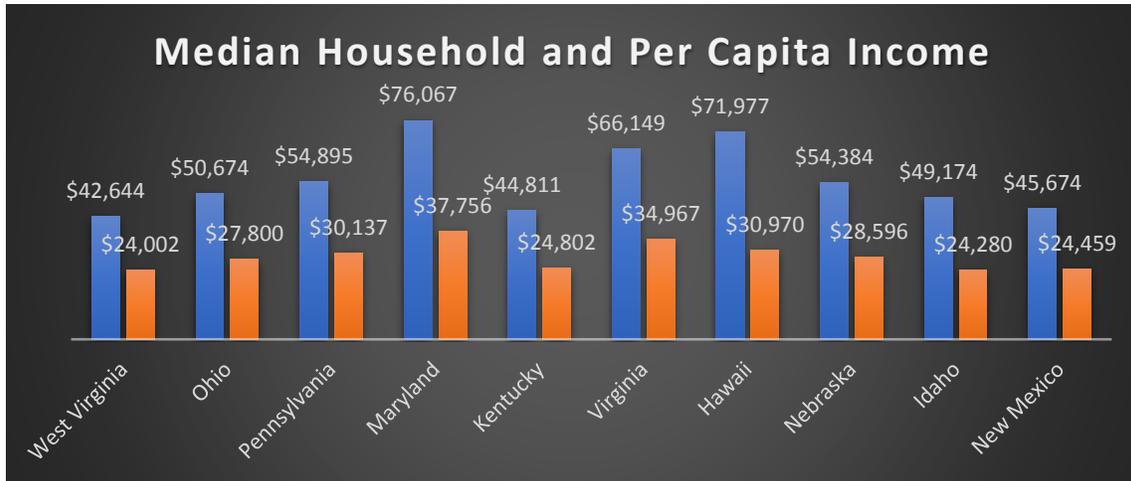
In preparation for the 2018 Report, Circuit Court Judge Derek Swope provided updated compensation information for the supreme court justices and the circuit court judges. In addition, Family Court Judge Derek Tallman provided information on behalf of the Family Court Judges Association.

The Commission also considered information from the U.S. Census Bureau regarding the growth and decline of population in the states examined for Factor 2. *See the following chart:*

Geographic Area	Population Estimate (as of July 1)		Change, 2016 to 2017		National Ranking of Regions and States			
					Population Estimate (as of July 1)		Change, 2016 to 2017	
	2016	2017	Number	Percent	2016	2017	Number	Percent
West Virginia	1,828,637	1,815,857	-12,780	-0.7	38	38	50	50
Virginia	8,414,380	8,470,020	55,640	0.7	12	12	14	19
Ohio	11,622,554	11,658,609	36,055	0.3	7	7	18	32
Pennsylvania	12,787,085	12,805,537	18,452	0.1	6	5	25	39
Kentucky	4,436,113	4,454,189	18,076	0.4	26	26	26	29
Maryland	6,024,752	6,052,177	27,425	0.5	19	19	21	27
Nebraska	1,907,603	1,920,076	12,473	0.7	37	37	31	20
Hawaii	1,428,683	1,427,538	-1,145	-0.1	40	40	45	47
Idaho	1,680,026	1,716,943	36,917	2.2	39	39	16	1
New Mexico	2,085,432	2,088,070	2,638	0.1	36	36	40	40

These figures show that West Virginia is one of two states in the comparison that is losing population, and it is losing population at a much higher rate than the other negative growth state, Hawaii.

Finally, the Commission considered information from the U.S. Census Bureau regarding the 2017 median household income and per capita income in West Virginia and the states examined in Factor 2. See the following chart:



The information indicated that West Virginia has the lowest median household income, and lowest per capita income of the states in the comparison.

## CONCLUSIONS AND RECOMMENDATIONS

### Findings

Based on the information it has gathered and reviewed, the Commission makes the following findings:

- In order to maintain a strong, qualified and independent judiciary, and in order to attract qualified candidates and retain experienced judges, appropriate judicial compensation is essential. To date, judicial compensation in West Virginia has been determined on an ad hoc basis, which has resulted in adjustments being made approximately every five to six years. This ad hoc approach has resulted in a lack of predictability in ensuring that judicial compensation is sufficient to attract and retain a competent and well-qualified judiciary.
- Regular, systematic increases in judicial compensation are both necessary and appropriate in order to achieve and maintain appropriate judicial compensation. Such regular, systematic increases would make judicial compensation more predictable and are essential to ensure that judicial compensation remains at levels sufficient to attract and retain a competent and well-qualified judiciary.
- The age of judges serving in the West Virginia judiciary is increasing, and it is anticipated that many may retire in the near future. This fact further reinforces the importance of setting judicial compensation at levels that are adequate to attract competent and well-qualified persons to the judiciary.

- The last judicial salary increase became effective in 2011, increasing the salaries of the state's supreme court justices to \$136,000, circuit court judges to \$126,000, and family court judges to \$94,500.
- Beginning in 2013, the state's magistrates were paid depending on the population they serve, either \$51,200 or \$57,500 per year. As of January 1, 2017, all magistrate salaries are \$57,500. For those magistrates whose salary was set at \$57,500 in 2013, those positions have not received a salary increase since that time.
- When compared with other high court judges, the salaries of West Virginia's supreme court justices rank 51<sup>st</sup> in the nation. Circuit court judges rank 50<sup>th</sup> in the nation, and when cost of living is factored into the comparison rank 42<sup>nd</sup>.
- The mean and median salary for circuit court judges in states examined in Factor 2 is \$153,247 and \$149,992, respectively. When factoring in the cost of living, the mean and median are \$140,677 and \$139,240, respectively.
- The average mean and median raise nationally for state supreme court justices and circuit court judges from January 2017 to July 2018 was 3.11%.
- The Commission was unable to determine the mean and median salaries for family court judges due to the lack of comparable courts throughout the country.
- The Commission was unable to determine the mean and median salaries for magistrates due to the very limited number of comparable courts and wide variation in how those salaries are determined within those courts.
- The salaries of attorneys with eight years of private practice experience in West Virginia and the surrounding region indicate that the salaries of Supreme Court and Circuit Court judges are below the salaries of such attorneys.
- West Virginia's judicial retirement benefits are fair and comparable to those in the surrounding states and states with similar population.
- The 2014 West Virginia Circuit Judge Workload study, performed by the National Center for State Courts, concluded that the state needed eighty-nine judges to perform the work performed by the seventy judges on the bench.
- The Supreme Court's caseload has fallen by fifty percent in the last fifteen years. However, because of revision to the Rules of Appellate procedure, which guaranteed the right to an appeal, the Supreme Court's workload has increased to address this change in rules.
- Currently, the opioid epidemic in West Virginia has increased the workload demands on all levels of West Virginia's judicial system.
- If West Virginia's population continues to decline, this may result in a decreasing workload for the judiciary as a whole.

## Recommendations

As a result of its findings, the Commission recommends:

- That salaries of the justices, circuit judges, family court judges, and magistrates be adjusted annually by 3% or the rate of inflation, whichever is greater.
- That, in order to incorporate the 3.11% national mean and median increases to judicial salaries, and thus prevent West Virginia’s judicial salaries from falling farther behind what this Commission recommended in its revised 2017 Report, the current salaries of the justices, circuit court judges, and magistrates be increased by 8.27% in 2019, and the salaries of the family court judges be increased by 10.33% in 2019.
- Based upon a unanimous vote, that salaries of the justices, circuit judges, and magistrates be increased by 8.27% in 2019.
- Based upon a unanimous vote, that salaries of family court judges be increased by 10.33% in 2019.
- Based upon a unanimous vote, that salaries of justices, circuit judges, family court judges, and magistrates be increased by 3% each year in 2020, 2021, and 2022.
- That a multi-year plan for salary adjustments be adopted, *as follows*:

Judicial Officer	Current Salary	2019 Increase	2019 Salary	Increase for the next 3 Years	2020 Salary	2021 Salary	2022 Salary
<b>Justice</b>	\$136,000	8.27%	\$147,247	3%	\$151,665	\$156,215	\$160,901
<b>Circuit judge</b>	\$126,000	8.27%	\$136,420	3%	\$140,513	\$144,728	\$149,070
<b>Family Court judge</b>	\$94,500	10.33%	\$104,262	3%	\$107,390	\$110,611	\$113,930
<b>Magistrate</b>	\$57,500	8.27%	\$62,255	3%	\$64,123	\$66,047	\$68,028



## Attachment A Judicial Retirement Information

State	Type of Benefit Plan	Amount of required contribution to Plan?	Mandatory Retirement Age	Requirements for normal retirement?	Retirement Benefit
1. West Virginia	Defined Benefit	From 7.0% to 10.5% set Annually by Actuarial Report	None	Elected prior to 2005 - 12 years of actual service as a judge, 4 may come from military service or service as a prosecutor if the latter was served prior to 1988. Judge / Justice who has reached the age of 65 with 16 years credited service may retire with full benefits. Judge / Justice who has reached the age of 62 with 16 years credited service may retire with lesser benefits. A Judge / Justice with 24 years credited service may retire at any age.	Elected prior to 2005 - 75% of salary of current sitting judge or justice, and can be increased or decreased on an annual basis depending on this salary amount. Elected after 2005 - 75% of average of a set number of previously earned salaries at date of retirement, no increases or decreases.
2. Ohio	Defined Benefit	10%	70	55 with 25 years of service, 60 with 5 years of service, any age with 30 years of service. Reduced benefits available at 55 if do not have 30 years of service	Percentage of Final Average Salary. Highest 3 years.
3. Pennsylvania	Defined Benefit	A judge contributes 10% of his or her salary for the first 10 years and 7.5% for all subsequent years.	75	Superannuation Pension – age 60 with 3 years of service or any age with 35 years. Early pension – under age 60, judges vest after 5 years of service and can receive a reduced pension. Disability pension – minimum service of 5 years & must meet medical requirements	4% x first 10 years x Final Average Salary, 3% x all subsequent years x Final Average Salary. Final Average Salary is average of three highest periods of four consecutive calendar quarter salaries. An early retirement factor is applied to the formula if below superannuation age.

## Attachment A Judicial Retirement Information

4. Kentucky	Defined Benefit (Prior to January 1, 2014) Defined Contribution (January 1, 2014 forward)	Defined Benefit - A judge contributes 6% of his or her salary.	None	Benefits are payable to a vested member. For the Defined Benefit Plan, vesting is achieved after eight years of state service. For the Hybrid Cash Benefit Plan, vesting is at (a) At age sixty-five (65) with accumulation of five years of active service credit in the Plan and any other state-supported retirement system of the Commonwealth; or (b) At least age fifty-seven (57) and the member's accumulated active service credit in the Plan and any other state-supported retirement system of the Commonwealth plus his/her age is at least eighty-seven (87).	For the Defined Benefit Plan, a pension cannot exceed 100% of final compensation. Final Compensation is the average of the 60 months of salary preceding the date of separation of service.
5. Maryland	Combination of Defined Benefit and Defined Contribution	8%	70	Age: mandatory retirement at age 70; minimum retirement age is 60. Service: eligible to retire at age 60 with 16 years of creditable service.	2/3 of annual salary of active judge. The maximum service credit that may accrue in the Judges' Retirement System is 16 years. With 16 years of service, you receive 2/3 of the salary of an active judge at the time of your retirement. With less than 16 years, your benefit is calculated as follows: $(.666667 \times \text{Salary of active judge}) \times (\text{creditable service} / 16) = \text{Annual Basic Allowance}$ .
6. Virginia	Defined Benefit and Defined Contribution	5% for Defined Benefit Plan; 4% for Hybrid Plan	73	Members may retire at 65 with at least 5 years of service or Rule of 90.	Plan 1 Judges final average compensation based a calculation of service credit that varies depending on Judges' age during service and time of entry into the plan. Plan 1 uses prior 36 months salary. Plan 2 Judges based upon prior 60 months. Hybrid also based on prior 60 months salary.

## Attachment A Judicial Retirement Information

7. New Mexico	Combination of Defined Benefit and Defined Contribution	10.50% None.	Magistrate Plan vesting at 8 years, retirement any age and 24 years or age 65 and at least 8 years. Judge Plan vesting 8 years, retirement at age 60 with at least 15 years or age 65 with at least 8 years.	Magistrate Plan (non-lawyer, limited jurisdiction state courts) annual service credit 3.0% per year of service up to maximum 85% of final 5-year salary average. Judge Plan (general jurisdiction and appellate courts) annual service credit 3.25% up to maximum of 85% of final 5-year salary average.
8. Nebraska	Defined Benefit	Judges on bench on or after 7/1/04 that elected enhanced benefits: 9% if less than 20 yrs. service, 5% with 20 or more yrs. service. Judges on bench before 7/1/04 not following provisions above: 7% if less than 20 years service, 1% if 20 or more years service.	None.	Age 65 required for full benefit. 62-65, benefit is reduced by 3-9%. 52-62 benefit is actuarially reduced.  Lifetime monthly retirement benefits are based on this formula: Average 3 highest 12-month periods of compensation x Creditable Service Years x Formula Factor (3.5%). Maximum benefit is 70% of final average compensation.
9. Idaho	Combination of Defined Benefit and Defined Contribution	A judge contributes 11.57% of his or her salary for twenty years,	None.	For each year in the first ten years of service, the judge receives 5% per year of service, up to 50%. For each year in the second ten years of service, the judge receives 2.5% per year of service. The total maximum retirement benefit is 75% of the highest salary. If approved for Plan B senior judge service, 12.5% will be added to your retirement up to the 75% maximum.

**Attachment A**  
**Judicial Retirement Information**

10. Hawaii	Defined Benefit	<p>Appointed as a Judge on or after July 1, 2012: 9.8% of his or her salary.          Appointed as a Judge prior to July 1, 2012: 7.8% of his or her salary.</p>	70	<p>Appointed prior to July 1, 1999: Any age with 10 years of mixed service (no pension reduction for service as judge; 5% age reduction penalty applied to "other" service if below age 55. Appointed after June 30, 1999: Any age with 25 years of mixed service (5% age reduction penalty applied to all service if below age 55) Mixed service = includes a combination of Judge service and other service. Appointed prior to July 1, 2012: Full Retirement: Age 55 with 5 YOS (mixed service) Appointed on or after July 1, 2012: Full Retirement: Age 60 with 10 YOS Early Retirement: Age 55 with 25 YOS (5% age reduction penalty for each year below age 60)</p>	<p>If appointed as a Judge on or after July 1, 2013: Average Final Compensation (AFC) x 3.-% x Years of Service (YOS). (AFC = 5 highest years of base pay excluding lump sum vacation pay.) Also receive an annuity equal to the actuarial equivalent of judge's accumulated contributions made to the retirement system while serving as a judge.          If appointed as a Judge prior to July 1, 2012: AFC x 3.5% x YOS (AFC = 3 highest years of gross pay excluding any lump sum vacation pay.) Also receive an annuity equal to the actuarial equivalent of a judge's accumulated contributions made to the retirement system while serving as a judge.</p>
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