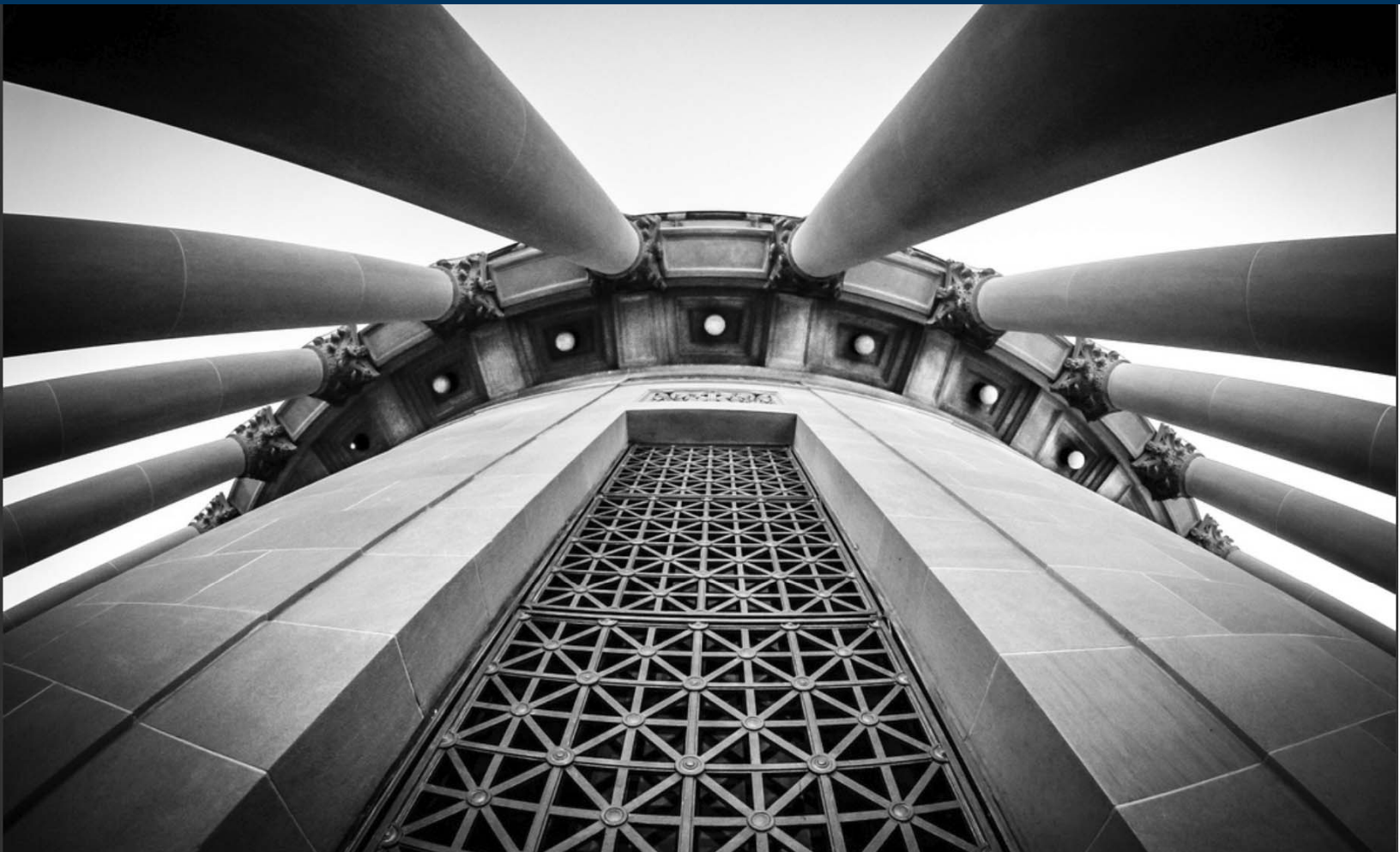




# REPORT OF THE WEST VIRGINIA JUDICIAL COMPENSATION COMMISSION

August 2017



# 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, including 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 held its first meeting on August 24, 2017, and reviewed data relating to the factors to be considered in setting judicial compensation. On August 31, 2017, the Commission met again to adopt this report. 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).

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

## 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 of 2017, 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 21 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 34 years, ranging from 19 to 50 years of admission. A survey of 74 current circuit court judges shows that they have been admitted to practice law in this state for an average of more than 32 years, ranging from ten to 55 years of admission. A similar survey of 46 current family court judges shows that they have been admitted to practice law in this state for an average of more than 24 years, ranging from eight to 42 years of admission.<sup>6</sup> While similar data could not be located or compiled for magistrates, this review nevertheless demonstrates that individuals with significant experience are, and remain, attracted to the bench.

Of course, one consequence of a highly-experienced bench is that many in the judiciary may retire in the coming years. For that reason, it is essential that the level of compensation adequately attract future generations.

## 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>7</sup> The NCSC also provides information on the “normalized” salaries of judges. This normalized data

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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>By statute, there should be a total of 47 family court judges. However, data could only be collected for 46 family court judges.

<sup>7</sup>See <http://www.ncsc.org/~media/Microsites/Files/Judicial%20Salaries/JST-2017-layout.ashx>

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.

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.

**Salaries of Judges in West Virginia’s Surrounding States as of January 1, 2017**

State	Highest Court Salary - Rank	Intermediate Appellate Court Salary - Rank	General – Jurisdiction Court	General Jurisdiction Using COLA
West Virginia	\$136,000 - 46	N/A	\$126,000 - 47	\$126,808 - 39
Kentucky	\$135,504 - 48	\$130,044 - 38	\$124,620 - 48	\$132,760 - 32
Ohio	\$156,150 - 36	\$145,550 - 30	\$133,850 – 40	\$136,618 - 29
Maryland	\$176,433 - 14	\$163,633 - 19	\$154,433 - 22	\$127,950 - 37
Virginia	\$192,458 - 9	\$176,510 - 9	\$166,136 - 11	\$154,176 - 9
Pennsylvania	\$206,054 - 6	\$194,442 - 5	\$178,868 - 8	\$158,438 - 7

**Salaries of Judges in Similarly Populated States as of January 1, 2017**

State	Highest Court Salary - Rank	Intermediate Appellate Court Salary - Rank	General – Jurisdiction Court	General Jurisdiction Using COLA
West Virginia	\$136,000 - 46	N/A	\$126,000 - 47	\$126,808 – 39
New Mexico	\$131,174 - 50	\$124,616 - 40	\$118,384 - 51	\$112,876 - 50
Nebraska	\$171,975 - 21	\$163,476 - 20	\$159,077 - 19	\$158,737 – 6
Idaho	\$140,000 - 44	\$130,000 - 39	\$128,500 - 44	\$132,529 - 33
Hawaii	\$218,820 - 3	\$202,596 - 4	\$197,112 - 2	\$124,828 – 40

West Virginia’s justices and circuit court judges have some of the lowest salaries in the country, ranking 46<sup>th</sup> and 47<sup>th</sup>, respectively. Factoring in the cost of living, however, raises West Virginia to 39<sup>th</sup> in the country. Similar data could not be located or compiled for family court judges or magistrates.

**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 relies more heavily on state judicial salaries in its recommendations. Due to the inherent differences between the state and the federal governments, federal judicial salaries do not carry the same weight as other states, particularly those other states



similarly situated to our own. It is of note that judicial salaries at the federal level have increased annually since 2013. *See chart below.*

Year	District Judges	Circuit Judges	Associate Justices	Chief Justice
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 has not been able to gather any definitive information about compensation in the private sector for serving as a private judge, arbitrator or mediator. Consequently, the Commission did not examine data for this factor.

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

The Commission attempted to locate information on the compensation of West Virginia attorneys, specifically those in the private sector. However, the Commission is unaware of any organization or entity that collects compensation information that distinguishes between public and private sector employment.

Nonetheless, the Commission reviewed data collected by the Department of Labor’s Bureau of Labor Statistics regarding wages of West Virginia’s attorneys.<sup>8</sup> According to the BLS’s May 2016 data, attorneys in West Virginia earned an annual mean wage of \$100,430. Attorneys in the 75<sup>th</sup> and 90<sup>th</sup> percentile of wages earned, respectively, \$117,000 and \$163,340.

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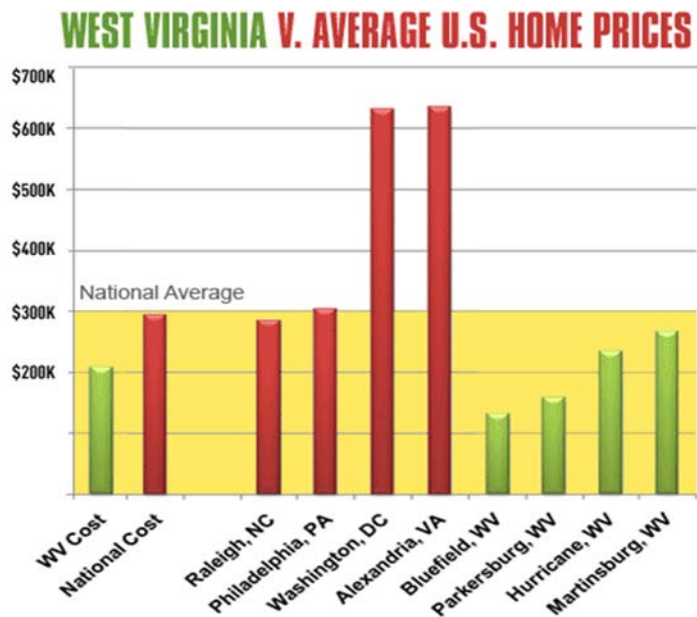
<sup>8</sup> See [https://www.bls.gov/oes/current/oes\\_wv.htm#23-0000](https://www.bls.gov/oes/current/oes_wv.htm#23-0000)

This information shows that West Virginia’s justices and circuit court judges are in the top 25% of the attorney salaries in the state. However, this information averages all attorney salaries, regardless of experience level. Thus, the information cannot show how West Virginia’s very experienced justices and circuit court judges are being paid when compared with their private sector counterparts. Family court judges fall below the mean wage of attorneys. Magistrates do not need to be licensed to practice law and, thus, do not fall under this factor’s consideration.

**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.

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.



As to the cost of energy, West Virginia has competitively low costs for 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.

Factor 2, which compares judicial salaries of the states, includes cost of living data into those comparisons. According to the NCSC’s January 1, 2017 report, West Virginia’s cost of living makes the salary of its’ circuit court judges slightly more competitive, placing those salaries at 39<sup>th</sup> in the country.

## 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 2016 salaries of other public officials and workers in the state, with the exception of higher education, shows that in that year only 35 public officials and workers were paid more than supreme court justices, and only 43 public officials and workers were paid more than circuit court judges.<sup>9</sup> Those individuals with salaries higher than justices and circuit court judges included the governor (with an annual salary of \$150,000); twenty-four medical doctors working for the Divisions of Health or Rehabilitative Services; and two employees of the judiciary. Public officials with salaries lower than supreme court justices and circuit court judges included the state attorney general, treasurer, and auditor.

## 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

Based on its analysis of the first six factors, the Commission concludes that regular adjustments in compensation are necessary and appropriate in order to seek 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. Therefore, the Commission recommends that 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

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<sup>9</sup>See the 2016 Annual Report of the West Virginia State Auditor’s Office, which includes detailed information on salaries for public workers in the state.

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 \$100,000.00 per year.

## 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.
- 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.

- The salaries of West Virginia’s supreme court justices and circuit court judges rank 46<sup>th</sup> and 47<sup>th</sup> in the nation when compared with other high court judges and general jurisdiction judges.
- Currently, judicial compensation is determined on an ad hoc basis, and this has historically resulted in adjustments being made between five- and six-year intervals.
- 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 makes it important to set compensation at a level adequate to recruit a future generation of judges to the bench.
- Regular, systematic increases make judicial compensation more predictable and are essential to ensure that judicial compensation remains at a level that is sufficient to attract a competent and well-qualified judiciary and helps to depoliticize the process of judicial compensation.

### Recommendations

As a result of its findings, particularly in light of the information provided by the judiciary, the Commission recommends that:

- Salaries of the justices, judges, and magistrates be increased by 4.25% during the 2018 Regular Session of the Legislature.
- Salaries of justices and judges have not increased since 2011 (6 years ago). An increase of 4.25% is less than 1% per year since the time of the last salary increase.
- The Legislature place weight on the Actuarial Valuation of the West Virginia’s Judges Retirement System, dated July 1, 2016, which assumes salary increases of 4.25% percent for its projections.
- Given the state’s current budgetary constraints, the salary increases proposed are on a one-time basis.
- In the future, the Commission will recommend the Legislature adopt 3-5 year schedules for salary increases.

Judicial Officer	Current Salary	Proposed 2018 Salary
<b>Justice</b>	\$136,000	\$141,780
<b>Circuit judge</b>	\$126,000	\$131,355
<b>Family Court judge</b>	\$94,500	\$98,516
<b>Magistrate</b>	\$57,500	\$59,944