

State of New Mexico
Judicial Compensation Commission

2017 Report

To the Legislative Finance Committee
and
Department of Finance and Administration

Introduction

In 2005, the Legislature enacted Senate Bill 263, now NMSA 1978, Section 34-1-10 (2005), creating the Judicial Compensation Commission (“JCC”), an independent six-member Commission charged with recommending to the Legislative Finance Committee and the Department of Finance and Administration a compensation and benefits plan for New Mexico judges. The JCC is currently comprised of:

Alfred Mathewson, Dean of the University of New Mexico School of Law, statutorily designated as Chair of the JCC;

Deborah Seligman, appointed by the President Pro Tempore of the New Mexico Senate;

Kathleen “Kay” Marr, appointed by the Speaker of the New Mexico House of Representatives;

Scotty A. Holloman, President of the State Bar of New Mexico, statutorily designated as a member; and

William F. Fulginiti, Executive Director of the New Mexico Municipal League, appointed by the Chief Justice of the New Mexico Supreme Court.

The position reserved for an appointee by the Governor of New Mexico remained vacant.

The JCC continues to find, as it has for several years, that judicial salaries in New Mexico are among the very lowest in the nation. This year, New Mexico judicial salaries are, for Appellate and District Court judges, the very lowest. The comparisons suffer further when the cost of living is considered because judges with comparable salaries are in states with lower costs of living. To attract high quality judges from diverse backgrounds to the bench in New Mexico and to encourage them to remain on the bench, the JCC asks that these disparities be addressed.

Statutory Requirement

The New Mexico Judicial Compensation Commission must annually “report to the legislative finance committee and the department of finance and administration its findings and recommendations on salaries for judges and justices.” NMSA 1978 § 34-1-10(G). Judicial compensation in New Mexico is set through a statutory formula based on the salary the Legislature sets for the Justices of the Supreme Court. NMSA 1978 § 34-1-9. The Chief Justice salary is set \$2,000 higher than the salary of a Justice. Each judge of the Court of Appeals is paid a salary equal to 95% of the salary of a Supreme Court Justice. Each District Court judge is paid 95% of the salary of a Judge of the Court of Appeals. Each Metropolitan Court judge is paid 95% of the salary of a judge of the District court. Each Magistrate is paid 75% of the salary of a Metropolitan Court judge. Salaries for Chief Judges are set according to the same formula based on the Chief Justice’s salary. Judicial salaries are not adjusted for location. A judge of the same rank earns the same amount in any community in the state, regardless of size, docket, cost of living, or judicial experience.

In 2015, the New Mexico Supreme Court adopted a policy of endorsing JCC recommendations. The judicial branch supports legislation in the 2018 session to accomplish the recommendations of the legislature’s Judicial Compensation Commission.

2017 Salary Recommendation

The JCC recommends that the salary of Supreme Court Justices be increased to \$144,100, an increase of \$12,926, or 9.85%. This increase would bring the district court judges salary to \$130,050, based on the statutorily mandated salary regression steps in 1978 NMSA § 34-1-9. The salary of New Mexico judges ranks last in the United States. The fact that judges are paid less than comparable lawyers as well as local and state employees has significantly reduced the Judiciary's ability to attract and retain judges with broad experience in criminal and civil law.

As of January 1, 2017: ¹

The salary for New Mexico Supreme Court Justices (\$131,174) fell to 50 of 51 among all the states and the District of Columbia. The recommended salary increase to \$144,100 would raise that ranking to 44 out of 51 in 2018 if the salaries of all other states remain unchanged.

The salary for New Mexico Court of Appeals judges again ranks 40 out of 40 (not all states have intermediate appellate courts). With the recommended salary increase to \$136,895, that ranking would improve to 37 out of 40 in 2018 if salaries in all other states remain unchanged.

District court judges in New Mexico again rank 51 out of 51. The recommended increase to \$130,050 would improve this standing to 44 out of 51 in 2018 if salaries in other states remain unchanged.

The JCC recognizes a continuing trend in judicial appointments toward younger attorneys with backgrounds in criminal justice as government employees. There are few candidates with at least 15 years of experience. There are few candidates from private practice handling contract, business, or other civil matters such as divorce cases. Paying judges the lowest salaries in the nation is having an impact on the diversity of candidates who seek judicial office. Candidates with only criminal law experience have a steep learning curve when serving in districts where judges are expected to hear a diverse range of cases.

The judiciary should reflect a diversity of legal backgrounds, including the private sector and law firms, as well as government experience.

Our court system should be filled with judges who not only are intelligent, thoughtful, and faithful to the rule of law, but also bring diversity of experience and background....The reality is that all judges bring into the courtroom their unique life experience, tempered by their oath to make decisions based on the law and the constitution. It's the integrity and judgment of those men and women that allow our constitutional democracy to move forward.²

¹ NCSC Annual Survey of Judicial Salaries, January 2017, at <http://www.ncsc.org/~media/Microsites/Files/Judicial%20Salaries/JST-2017-layout.ashx>

² Yvette McGee Brown, former Ohio Supreme Court Justice, Forward to [Building a Diverse Bench: A Guide for Judicial Nominating Commissioners](#), Brennan Center for Justice, 2016.

2017 Salary Recommendation, continued

In 2017, the New Mexico Bar Association commissioned a lawyer compensation study, as it did in 2012. This year, survey respondents who identified themselves as a partner/shareholder reported an average salary of \$210,502, with sole practitioners reporting \$184,457.³ The report indicates that attorneys charged the highest per-hour billing rate (a median of \$250) for civil litigation, business, contract law, and estate planning, which could explain why fewer of those performing this work are attracted by the salary offered by the judiciary.

The average partner in a law firm is paid 60% more than a Justice of the Supreme Court and the average solo practitioner is paid 41% more.⁴ The average pay of all 569 lawyers in the survey, from partners in law firms to legal aid and government attorneys, was \$142,382, putting a Justice of the Supreme Court 8.6% below the average pay of an attorney in any field of law practice in New Mexico.

The 2016 Judicial Compensation Commission report reviewed all 309 judicial candidates from 2010 to 2015. The review revealed that 17% were age 39 or younger, although a district court judge must be at least age 35. More striking was that 85% of all applicants had experience in government service. Almost half (44.7%) had ten or more years of government service. Lawyers with experience in the private sector as well as law firms report that judicial salaries prevent them from applying to be judges. The data show these lawyers are not seeking judicial office.

Improved salaries would help address the need to attract a more diverse mix of experience among attorneys seeking to be judges. In the 2018 legislative session, the JCC recommends a step toward improved compensation by raising the salary of Supreme Court justices to \$144,100. This will have the effect, based on statutory requirements, of raising district court judges' salaries to \$130,050. This is the level at which the JCC believes a career on the bench would begin to become more attractive to attorneys in private practice.

³The Economics of Law Practice in New Mexico, *Lawyer Compensation*, May 2017, Research & Polling, Inc.

⁴The Economics of Law Practice in New Mexico, *supra*, at p. 7

2017 Salary Recommendation, continued

FY2019 NM JUDICIAL COMPENSATION incl Benefits (MRA & JRA)									
IMPLEMENTATION COST: \$2,564,559									
Job Title	FTE	Formula	Proposed Annual Rate - Target Pay	Benefits Cost 25.15% JRA & 24.65% MRA	Proposed Total Cost of total incumbents in job class	Current Annual Rate - Target Pay	Benefits Cost 25.15% JRA & 24.65% MRA	Cost of total incumbents in job class	TOTAL Cost Increases
Chief Justice	1	AJ + \$2000	\$146,100.00	\$36,744.15	\$182,844.15	\$133,174.31	\$33,493.34	\$166,667.65	\$12,925.69
Associate Justice (AJ)	4	Target Pay	\$144,100.00	\$36,241.15	\$721,364.60	\$131,174.31	\$32,990.34	\$656,658.60	\$12,925.69
Chief Court of Appeals	1	95% of Chief Justice	\$138,795.00	\$34,906.94	\$173,701.94	\$126,515.59	\$31,818.67	\$158,334.27	\$12,279.41
Court of Appeals Judges	9	95% of Associate Justice	\$136,895.00	\$34,429.09	\$1,541,916.83	\$124,615.59	\$31,340.82	\$1,403,607.75	\$12,279.41
Chief District Judge	13	95% of Chief Court of Appeals Judge	\$131,855.25	\$33,161.60	\$2,145,218.99	\$120,189.81	\$30,227.74	\$1,955,428.19	\$11,665.44
District Judge	81	95% of Court of Appeals Judge	\$130,050.25	\$32,707.64	\$13,183,388.92	\$118,384.81	\$29,773.78	\$12,000,846.25	\$11,665.44
Chief Metro Judge	1	95% of Chief District Judge	\$125,262.49	\$31,503.52	\$156,766.00	\$114,180.32	\$28,716.35	\$142,896.68	\$11,082.16
Metropolitan Judge	18	95% of District Court Judge	\$123,547.74	\$31,072.26	\$2,783,159.88	\$112,465.57	\$28,285.09	\$2,533,511.99	\$11,082.16
Presiding Magistrate Judge	5	75% of Chief Metro Judge	\$93,946.87	\$23,157.90	\$585,523.84	\$85,635.24	\$21,109.09	\$533,721.65	\$8,311.62
Magistrate Judge	62	75% of Metropolitan Judge	\$92,660.80	\$22,840.89	\$7,161,104.85	\$84,349.18	\$20,792.07	\$6,518,757.72	\$8,311.62
	195				\$28,634,990.01			\$26,070,430.74	\$2,564,559.27

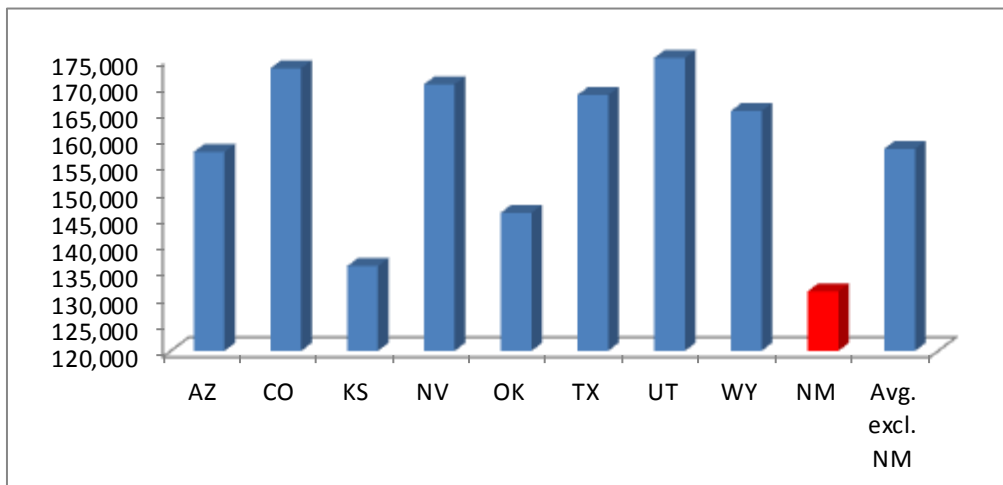
KEY: JRA: 25.15% = 2.5% retiree healthcare, 15% para, 7.65% FICA
MRA: 24.65% = 2% retiree health care, 15% para, 7.65% FICA

With the recommended 9.85% increase, New Mexico's judicial salaries will still rank near the bottom at all court levels. Judicial pay will still fall far below the compensation of partners in New Mexico law firms. In addition, while judges decide the most critical legal issues facing the people of New Mexico, many state and local government employees receive higher compensation than do Justices of the Supreme Court. Comparisons worsen when appellate and trial judges' salaries are considered. More comparisons are on page six of this report.

⁴Cost includes all judges as follows: 5 Supreme Court, 10 Court of Appeals, 94 district court, 19 metropolitan court, and 67 magistrate court as well as hearing officers and commissioners whose salaries are tied to judicial pay. Cost of increase includes the small additional compensation paid to the Chief Justice, Chief Judges of each court, and Presiding Judges in a few large magistrate courts.

National Salary Comparison 2017

- New Mexico Supreme Court Justice salary falls to 50 out of 51.
- New Mexico Intermediate Appellate Court (Court of Appeals) Judge salary again ranks 40 out of 40 (not all states have an Intermediate Appellate Court).
- New Mexico general jurisdiction district trial court judge salary ranks 51 out of 51, having dropped to last place in 2016.
- The average national salary of a Supreme Court Justice is \$169,325 and the median is \$168,046. The salary of a New Mexico Supreme Court Justice is \$131,174.⁶
- New Mexico Justice salaries continue to lag well behind neighboring and adjacent states in the Mountain West region.



Supreme Court Justice Salaries as of January 1, 2017 in Western Comparison States

AZ	157,325
CO	173,024
KS	135,905
NV	170,000
OK	145,914
TX	168,000
UT	174,950
WY	165,000
NM	131,174

Average excluding New Mexico: \$161,265

⁶NCSC Annual Survey of Judicial Salaries, January 1, 2017, footnote 1 *supra*.

State and Local Salary Comparison

The salaries of New Mexico Supreme Court Justice, Court of Appeals judges, and judges at all trial court levels (highlighted in yellow) compared to salaries paid in local and state government, as well as in higher education.⁷

University of New Mexico School of Law Dean	\$195,000
ERB Executive Director	\$164,588
PERA Executive Director	\$163,030
Bernalillo County Attorney	\$155,000
Legislative Finance Committee Director	\$153,717
Legislative Council Service Director	\$153,717
Albuquerque Metropolitan County Detention Center Chief	\$150,000
Los Alamos County Attorney	\$150,000
Office of the Superintendent of Insurance Actuary	\$143,000
Taos County Attorney	\$137,549
Governor's Chief of Staff	\$136,350
New Mexico Supreme Court Chief Justice	\$133,174
New Mexico Supreme Court Justice	\$131,174
Santa Fe Deputy City Manager	\$130,000
San Juan County Attorney	\$129,500
State Auditor's Office Deputy State Auditor	\$126,511
Senate Chief Clerk	\$118,874
New Mexico District Court Trial Judge	\$118,384
House Chief Clerk	\$115,000
Legislative Education Study Committee Director	\$115,000
Attorney General's Office Chief of Staff	\$113,000
New Mexico Metropolitan Court Judge	\$112,466
New Mexico Taxation & Revenue Deputy Cabinet Secretary	\$104,939
Las Vegas City Attorney	\$100,734
Santa Fe Municipal Judge	\$100,464
New Mexico Taxation & Revenue General Counsel	\$99,127
Legislative Council Service Staff Attorney	\$98,108
State Land Office Assistant General Counsel	\$95,014
Senate Leadership Analyst	\$94,315
Santa Fe City Clerk	\$96,532
Magistrate Court Judge	\$84,349

⁷Data is from salaries reported on the New Mexico Sunshine Portal, the University of New Mexico Sunshine Portal, various sites published by state and local governments, and information provided by employees of the institution or government offices.

Judicial Retirement Funding

As New Mexico’s Judicial Compensation Commission has continued to emphasize over the years, adequate compensation for state court judges is tied directly to judicial retirement benefits. There has been an erosion of judicial retirement provisions over the last few years. Retirement provisions are of particular importance to judges because judicial careers typically start in early middle age, often a very different scenario from other state employees.

Reducing the take-home salaries of judges through increases in contributions to retirement plans decreases the attractiveness of a judicial career, especially when accompanied by reductions in retirement benefits.

In 2015, NCSC conducted a nationwide survey on judicial retirement and benefits. The resulting report shows that New Mexico judges, who have the lowest salary in the nation, contribute at the 4th highest rate, behind judges in California, Rhode Island, and Illinois. The table below compares contribution rates of judges in general jurisdiction courts. Judges in Nevada and Utah contribute nothing.⁸

*Contribution Rates to
Judicial Defined Benefit Retirement Programs*

	Salary	Rank	Judge's Contribution Rate
California	\$ 189,041	5	15.25%
Rhode Island	\$ 158,340	18	12.00%
Illinois	\$ 190,758	3	11.00%
New Mexico	\$ 118,384	51	10.50%
Idaho	\$ 124,000	47	10.20%
New Hampshire	\$ 146,236	27	10.00%
Pennsylvania	\$ 176,572	7	10.00%

The high retirement contribution rate for New Mexico judges combines with the nation’s lowest judicial salaries to aggravate challenges to attracting and retaining judges with a broad range of legal experience.

⁸National Center for State Courts: Trends in State Courts 2014, Special Focus on Juvenile Justice and Elder Issues, Judicial Retirement and the Recession, p. 67-70

⁸Table from NCSC Annual Survey of Judicial Salaries, January 1, 2017

2017 Proposed Judicial Pay Constitutional Amendment

As is the case for judicial salary commissions in 14 other states, the JCC is only advisory to the Legislature. JCC has no statutory authority to enforce its recommendations. However in nine states (AL, AZ, DE, HI, MD, MO, NY, OK, and WN) the salary recommendations of the commission are binding unless affirmatively rejected by the Legislature (or by the voters in Washington). Three of these states (Alabama, Arizona, and Oklahoma) moved from advisory commissions to binding-unless-rejected commissions since 2015. In addition the Arkansas Constitution provides that the commission's recommendations are binding and cannot be rejected by the Legislature or Executive.⁹

Some states have addressed this by statute; in others, this authority is granted by their constitutions. For example, the Missouri Constitution in Article VIII, Section 3, paragraph 8 provides that the Salary Commission shall file a schedule of compensation by December 1, which "shall become law unless disapproved by concurrent resolution adopted by a two-thirds majority vote of the general assembly before February 1 of the year following the filing of the schedule." **While Missouri requires a two-thirds vote, most states allow override of the recommendation of their compensation commissions by a simple majority vote of the legislature.**

In the eight states that have commissions whose recommendations take effect unless overridden by their states' legislatures, salaries of judges tend to the middle of the range. Highest court salaries in five of those states (Hawaii, New York, Delaware, Maryland, and Missouri) are in the top 20. General jurisdiction courts in four of those five (Hawaii, New York, Delaware, and Maryland) are in the top 25. Highest court judges in Oklahoma rank 43rd in salary, and its general jurisdiction judges' salaries rank 42nd.

The Commission recommends the Legislature approve by joint resolution a constitutional amendment to be presented to voters on the November 2018 ballot. Such a provision would add New Mexico to the growing list of states that favor the determination of judicial compensation by an independent, non-partisan commission subject to a legislative override. The amendment would make the salary recommendations of the Judicial Compensation Commission effective unless rejected or modified by the Legislature, by amending NM Constitution, Article VI, Section 11, as well as Article VI, Sections 17 and 26. Language similar to that quoted above from the Missouri Constitution would accomplish this change. The amendment would:

- Make the recommendations of the independent judicial salary commission created by the Legislature effective while retaining the Legislature's power to reject or modify its recommendations;
- Reduce judicial lobbying for pay increases in competition with other critical needs of the courts;
- Establish the Legislative Branch as the authority for Judicial Branch salaries, minimizing political interests in establishing pay for judges; and
- Avoid litigation such as occurred in 2014 over veto or partial veto of appropriations for judicial salaries

⁹NCSC Annual Survey of Judicial Salaries, January 1, 2017, footnote 1 *supra*.

Update on 2017 Legislative Session

The JCC continues to recognize that additional legislation to address other aspects of judicial retirement is neither likely nor advisable so soon after the very significant 2014 legislation. Going forward, the JCC recommends that the Legislature continue to consider meeting the state's funding obligations without reliance on docket fees and fines, and consider improving retirement benefits to help attract a broader diversity of judicial candidates.

Judicial Compensation

The 2017 legislative session did not result in any increase in judicial pay for FY 18.

Judicial Retirement

During the 2017 legislative session, judicial retirement did not change. Annual reports for the fiscal year ending June 30, 2017, which will be published in late 2017, will reflect the impact of the 2014 legislation as well as challenges due to investment experience that is averaged over a five-year cycle. Judicial retirement funding continues to rely in part on fees.

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