

It's Time to Increase Compensation for Michigan's Judges

By David H. Fink

State judges in Michigan have not seen a pay increase since 2002—a time when a gallon of gasoline cost \$1.35. In the interim, the overall consumer price index has increased nearly 30 percent. Over that same period, despite significant concessions, pay for *non*-elected state employees *has* kept pace with inflation. Most Michigan citizens would not see the erosion of judicial compensation as a major problem, so it is essential for our legal community to engage in a serious discussion about this issue.

In 2011, as a commissioner serving on the State Officers Compensation Commission, I proposed a modest increase in what we pay our state Supreme Court justices—a 3 percent increase in 2013 and a 3 percent increase in 2014. Because salaries for all Michigan judges are tied to salaries of Supreme Court justices, this proposal would have increased every judge's pay commensurately. While a majority of my Commission colleagues supported this pay increase, it could only become effective with an affirmative vote by the state legislature, and our elected legislators chose to take no action on the Commission's determination.

The State Officers Compensation Commission Process

Michigan's Constitution provides that the State Officers Compensation Commission determines salaries for the governor, lieutenant governor, secretary of state, attorney general, legislators, and justices of the Supreme Court.¹ For many years, Commission determinations automatically became effective if they were not rejected by a two-thirds vote of both houses of the legislature. In 2000, the Commission process resulted in a 38 percent pay increase for state legislators. State House members facing reelection that year were able to tell voters that

they opposed the pay increase, because the House voted to reject the Commission determination, but the inaction of state senators allowed the determination to become effective. This led to a firestorm of protest and a constitutional amendment requiring legislative approval of future pay increases.² Since then, the legislature has not had the political will to approve any pay increases. In fact, since 2002, the only change in compensation emanating from the Commission has been a 10 percent *reduction* for the governor, lieutenant governor, secretary of state, attorney general, and members of the legislature.

Legislative Resistance to Judicial Pay Increases

Legislators, who did not embrace a pay increase for state judges, no doubt would argue that the cost to the state is too great. But what about the cost to the state of an underpaid judiciary? The last Commission determination was not voted down; it was just ignored. There were no legislative hearings, no committee reports, no public consideration of the pros and cons of continuing the decade-long freeze of judicial pay—just a statement by one legislator's spokesperson that this was not the time for a pay increase.

The Current Situation

The proposal for 2013 and 2014 pay increases is now history. This year the Com-

mission would not adopt my proposal for 3 percent increases in both 2015 and 2016, but the Commission did accept and will be sending to the legislature a 3 percent increase for 2015 (with no additional increase for 2106). And this time around, the Commission's determination may be received more enthusiastically. This year, unlike 2011, the State Court Administrative Office strongly supports a pay increase. In fact, State Court Administrator Chad Schmucker appeared at the Commission's April meeting and testified in support of 3 percent increases for 2015 and 2016. In his prepared remarks he noted that, since 2002, while compensation for Michigan's trial court bench remained unchanged, trial courts in other states received a total of approximately 250 raises.

Another important development this year is the support of the State Bar of Michigan. In a letter from Executive Director Janet Welch and State Bar President Bruce Courtade, the State Bar endorsed the State Court Administrative Office's proposed increase "to make up for the lost earning capacity from more than a decade of salary stagnation."³

Reaching Out to Legislators

This proposed increase is not large, and even if the legislature affirms the current Commission determination to increase compensation for Michigan's judiciary, that increase will not be effective until January 2015—13 years after the last pay adjustment. But this is a critical first step. Some fear that the current constitutional process,

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with the need for an affirmative vote by term-limited state legislators, renders judicial pay increases impossible. Our legislators need to know how important it is to provide appropriate compensation to our judges. Now is the time for attorneys who believe in a strong, independent judiciary to speak out. Attorneys—particularly those who regularly appear in our trial and appellate courts—should reach out to their state legislators and offer their informed perspective on the importance of proper compensation for our state judges.

In the long run, can we really expect the best attorneys to seek a job with a salary that never increases? As the real income of our judges declines each year, eventually it will be unrealistic to expect most good lawyers to seek these positions. At some point, the only men and women who will be able to afford to sit as state judges will be the very wealthy, who don't need significant income, and the very unsuccessful, who can't do better in private practice. Is that really what we want?

Some people say that increasing judicial salaries in tough economic times sends the wrong message. I believe it sends exactly the right message—regardless of our current financial circumstances, we believe in justice and we want proper compensation for judges who make critical decisions that affect each of us every day. ■



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ENDNOTES

1. Const 1963, art 4, §12.
2. See *Id.*
3. Letter from SBM Executive Director Janet Welch and SBM President Bruce Courtade to the State Officers Compensation Commission (April 9, 2013) (on file with author).