



Federal Judicial Pay

"The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."¹

The erosion of the purchasing power of federal judicial pay over the last three decades has done what Congress and the President cannot: it has "diminished" the compensation of our federal judges, and the situation ought to be remedied. In order to address the problem, a bipartisan group of legislators, including Senators Edward Kennedy (D-Mass.) and Orrin Hatch (R-Utah), is sponsoring Senate Bill 1023. Senator Hatch spoke about the need for the legislation:

There is consensus among all who have seriously looked at this issue that the independence and quality of the judiciary is at risk because of the inadequacy of the current salaries of Federal judges.

The American Bar Association and Federal Bar Association issued a report on this issue in February 2001. That report documented the factors impacting erosion of judicial pay and the detrimental effects on the judiciary. Because of the withholding of cost-of-living adjustments, the impact of inflation, and the insufficient attempts to stabilize judicial pay, Federal judges are increasingly choosing to re-

sign or retire. Furthermore, the report noted, the prospect of a declining salary in real terms also discourages potential candidates from seeking appointments to the bench.

The American Bar Association has asked state and local bar associations to join in support of this effort, but the State Bar of Michigan will not be among them. At the April meeting of the Representative Assembly, a divided Assembly considered and rejected a resolution from the United State Courts Committee in support of an "immediate and significant" increase in federal judicial salaries, and an end to the statutory link of adjustments to the salaries federal judges with those of members of Congress.

The devaluation of judicial pay has occurred because Congress is reluctant to vote itself a pay increase or even to accept cost of living adjustments. As a result, federal judicial pay has fallen well behind private sector salary gains. Adjusted for inflation, federal judicial compensation has actually decreased 25 percent over the last three decades. Chief Justice William Rehnquist has highlighted this as one of the most critical problems facing the federal judiciary:

Inadequate compensation seriously compromises the judicial independence fostered by life tenure. That low salaries might force judges to return to the private sector rather than stay on the bench risks affecting judicial performance—instead of serving for life, those judges would serve the terms their finances would allow, and they would worry about what awaits them when they return to the private sector.

I do not believe the vote of our Representative Assembly was a statement about the value its members place on the federal judges, and in hindsight, I am not surprised by the vote. In these difficult economic times, with budget deficits looming as far as

the eye can see, big raises for any public servant will be tough to justify. Moreover, there is no objectively "right" answer about appropriate compensation, and no amount of discourse or rational analysis will lead us to a consensus. When we open discussion about what one person, or one lawyer, or one class of lawyers or judges should make in comparison to others we are entering emotionally charged terrain.

I can understand why a majority of the members of the Representative Assembly rejected arguments that the pool of candidates for federal judgeships will shrink to the wealthy or inexperienced if federal judicial pay is not increased. I know from experience that, overall, pay is not the sole career motivator for most lawyers. Some of the hardest working, most brilliant lawyers I know work in legal aid and indigent defense, and compensation is certainly not the primary attraction for the federal judges I know. Personal satisfaction, intellectual challenge, and a desire for public service all play important roles in the decision to embark on the difficult quest for a commission as a federal judge. Compensation does matter, however, and it should reflect the value we place on the work performed.

I believe that federal judicial pay should be increased on the basis of the work that judges do and its importance in our system of justice. Yes, I do believe that as a whole our federal judges are indeed among the "best and brightest" of our profession, but that is not the basis for my support. My support is based on the extremely challenging work federal judges do, not the value of the individuals who hold the positions. Constitutional challenges, complex multi-billion-dollar civil cases, questions of criminal procedure and criminal sentencing are the daily fodder for the federal judge's mill. My former

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partner and mentor, Theodore Sachs, an unquestionably brilliant and talented lawyer, once said that he eschewed the many offers he received to be considered for the federal bench because he did not wish to engage in the tortuous balancing of interests required in criminal sentencing. As a lawyer and as a citizen, I place extremely high value on the quality of judicial service, and I think judicial pay ought to be commensurate with the duties they perform. Accordingly, I personally support SB 1023.

Although I disagree with the position of the Representative Assembly, I must respect its vote, which binds the State Bar of Michigan. Moreover, the information offered through the Representative Assembly on the subject and the quality of its debate has, I hope, made me a more thoughtful advocate for my own position.

As an association of 36,000 lawyers, we will never find ourselves in lockstep on *any* issue. That is why one of the most important goals of our Strategic Plan is to offer our members more extensive and timely information about issues of importance to lawyers. Under our Strategic Plan, the State Bar is increasingly becoming a place where public policy ideas and challenges central to our professional lives are identified, communicated, and discussed. The State Bar and its sections have always been active participants in the public policy arena. With the advent of listservs, our sections are becoming even more vibrant centers of public policy ideas and debate and soon, the State Bar website will be an interactive source of public policy information.

As an association, our Strategic Plan commits us to advocate aggressively for issues that support our statement of purpose, minimize divisiveness, and are achievable. We are striving to meet that commitment. And when we as individual members disagree with a position taken by the State Bar, I am proud that the State Bar will be a source of information that will improve our understanding of the issues and help us individually to be better, more informed advocates for our opposing views. ◆

FOOTNOTE

1. U.S. Const., Article III, Section 1.