

STATE BAR LITIGATION SECTION REPORT

THE ADVOCATE



ALTERNATIVE DISPUTE RESOLUTION



VOLUME 105

WINTER

2023

CHAIR'S REPORT

Texas Judges Are Underpaid



GEOFF GANNAWAY

IMAGINE THE FOLLOWING JOB POSTING:

WANTED: Candidates for extremely important, demanding job. The position requires years of experience and expertise. It also involves high levels of stress, as your performance on the job may change the course of others' lives and result in fortunes changing hands. However, the position pays less than entry-level workers at competing businesses, and you will likely take a pay cut to start the job. In fact, not only is the initial pay low, but there will be no adjustments to keep up with inflation.

If you saw this post, you probably would tell the employer to take the job and shove it. But what if I told you that the position described is a Texas district court judge?

For our Texas judges, this scenario is a reality, not a hypothetical. Law school graduates reporting for duty at big firms with their shiny new Texas bar cards make about \$215,000 in their very first year of practice (before their bonuses). Meanwhile, a new judge makes \$140,000 – less than two thirds of the amounts those entry-level associates receive. The last increase in the base pay for a district court judge was over a decade ago – way back in September 2013. When considering inflation, the current salary of a district judge has *decreased* since 1991. Just to keep up with inflation since 1991 (forget about the far steeper pay increases for lawyers over that period), the base salary of a district judge would need to be around \$162,294. *Report of the Judicial Compensation Commission 2022*, p. 4 (unless otherwise noted, the statistics I recite herein come from this report, which is available at https://www.txcourts.gov/media/1455365/jcc_report_2022.pdf).

Do we expect judges to make as much as their peers at big law firms? No. We know Texas judges do not seek a black robe to get rich. They have heeded a call to serve the citizens of Texas, and know that comes with sacrifice. But the disparity between compensation of private attorneys and judicial salaries has become so lopsided that it may dissuade the best judges and judicial candidates from answering the call for public service – or from remaining on the bench. That is a problem. The Texas legislature failed to address the issue in the session that just concluded. We Texas trial lawyers need to fulfill our roles as officers of the court and advocates within the judicial system to ensure that this oversight does not repeat itself. Our judges and our judicial system deserve better.

Judges are the linchpin of any just and equitable society. Their role in upholding the rule of law, protecting individual rights, resolving disputes, promoting access to justice, and preserving democracy cannot be overstated. We trust judges with our weightiest disputes in both the civil and criminal arenas. Lives can be altered and hundreds of millions of dollars hang in the balance in legal proceedings taking place in our courthouses every single day. We must recognize and appreciate the vital role that judges play by supporting them with reasonable financial compensation.

Texas's glacial rate of pay increases has left judicial salaries lagging behind other states

Judicial pay increases have been few and far between in recent years. In 1998, district judges' salaries increased from \$85,217 to \$98,100. *Financing the Judiciary in Texas: Legislative Primer*, p. 93 (available at https://www.lbb.texas.gov/Documents/Publications/Primer/3140_Financing_Judiciary_Texas.pdf). In 1999, pay for district judges finally crossed into six figures, when it increased to \$101,700. *Id.* Then came an increase to \$125,000 in 2005 and to \$140,000 in 2013. But in the decade-plus since: nothing. No increase at all. A new judge in 2023 makes the same amount as a new judge in 2013. A lot has changed in that last decade. Shoot, the Astros have played in four World Series in that timeframe, and I've heard rumors that another team somewhere further north in Texas did, too.

Judges have every right to roll their eyes at the level of their judicial pay when they see headlines about Texas lawyers charging in excess of \$2,000 an hour and Texas law firms achieving record profitability, with individual partners at some

firms receiving – on average – millions of dollars a year in compensation. Mark Curriden, *Texas Lawyers Hit \$2,000 an Hour*, THE TEXAS LAWBOOK (Sept. 25, 2023). But it isn't just the top-earning attorneys at the headline-grabbing firms making more than Texas judges. The Judicial Compensation Commission has pointed to data from the Texas Workforce Commission that shows the average salary for all lawyers across the state in 2020 was \$142,733 – still more than the base pay for a district court judge.

To be sure, the legislature provided some relief to experienced judges with a tiered pay system in 2019. Now judges receive a 10% bump in pay after 4 years of service, and another 10% after 8 years. In addition, counties have discretion to supplement pay for district court judges by \$18,000 a year.

But Texas remains at the back of the pack compared to our sister states. According to the Judicial Compensation Commission, district court salaries rank 41st among the United States. And among the six most populous states (California, Florida, Illinois, New York, Pennsylvania, and Texas), Texas ranks dead last. Since 2013, while Texas judicial salaries stagnated, judges in 48 other states saw an average increase of 19% in their pay. During that decade, Nevada was the only state other than Texas not to increase salaries for the judges of its courts of general jurisdiction. The net result? Supreme Court of Texas Chief Justice Nathan Hecht observes that Texas is next-to-last in the country in judicial pay, edging out only West Virginia (I'm not sure how to reconcile Chief Justice Hecht's 49th ranking with the Commission's 41st ranking – but either way, I expect Texas to stack up better against other states).

If you're not yet convinced, consider this: trial judges in California receive a salary of over \$225,000 – more than 60% in excess of their Texas counterparts. If getting beat by California doesn't get your blood pumping as a Texas trial lawyer, I don't know what will.

It is tougher to be a judge than ever

Even as the compensation for Texas judges has stalled, we have placed increased expectations on our judicial candidates. In 2021, Texans passed a constitutional amendment requiring that district judges taking the bench on or after January 1, 2025 be at least 25 years old with at least eight years' experience practicing law or serving as a judge. To quote Chief Justice Hecht, "Constitutional qualifications for judges have increased, which is positive; but to raise those standards and increase workloads without commensurate increases in compensation is not right."

Why it matters: as judges retire, we need to offer competitive pay to recruit quality replacements

Our judicial benches in Texas are rich with experience: 90% of district court judges have been licensed as a Texas attorney for more than 15 years, and 40% of them have been licensed for more than 30 years. Of course, the fact that our judges have experience also means they are aging: 57% of district judges are older than 55. In other words, many of our judges are likely to retire soon. We are going to need to replace them with the best and brightest our profession has to offer. Increasing judicial pay will encourage talented young lawyers to seek the bench and enhance the quality of the next generation of judges who will decide our state's disputes.

Competitive judicial salaries are essential for attracting and retaining the most qualified individuals to serve on the bench. Fair compensation not only incentivizes seasoned legal professionals to consider a career in the judiciary but also encourages talented incumbent judges to remain in their roles. Increased compensation will attract individuals with deep legal knowledge and experience – those most likely to perform well as judges and foster public confidence in the judicial system.

Without competitive pay, the judiciary risks losing out on highly qualified candidates who may opt for more lucrative opportunities in private practice or other branches of government. This potential loss of talent could have detrimental effects on the quality of justice delivered and erode public trust in the legal system. Supporting a well-paid judiciary sends a strong message to Texas citizens about the value our state places on the rule of law and the importance of the judiciary in upholding it. Perhaps more importantly, paying our judges fairly demonstrates that we recognize the gravity of their responsibilities and appreciate the sacrifices they make in their service to our communities and our state.

The Texas legislature failed to increase judicial salaries, despite minimal budgetary impact

In 2007, the Texas legislature formed the Judicial Compensation Commission, composed of nine people (of whom no more than three can be lawyers) appointed by the governor with the advice and consent of the Senate. The Commission is tasked with reporting judicial salary recommendations to the legislature every two years. In its December 2022

report, that Commission recommended a 22% increase in the base pay of a district judge over a two-year period (an 11% increase in 2024 and another 11% increase in 2025). The Commission estimated a total cost to the state of \$56.8 million to implement these pay increases for the two-year period (that figure includes the ripple effects of increasing a district court judge's pay – including increases to prosecutor salaries and other amounts that are linked to judicial pay). To put this amount in perspective, the 2024-2025 budget for the state is about \$321 billion.

In his April 5, 2023 address regarding the State of the Texas Judiciary, Chief Justice Hecht urged lawmakers to adopt the Commission's recommendation and also to institute a biennial cost-of-living adjustment (the State of the Judiciary is available at <https://www.txcourts.gov/media/1456217/soj-address-2023-final.pdf>).

Some legislators did what they could to increase judicial pay. Representative Jeff Leach of Plano sponsored House Bill 2779, which would have implemented the salary increases proposed by the Commission. Matt Stringer, *Texas Lawmakers Fail to Pass Judicial Compensation Reform in Legislative Session*, THE TEXAN (August 9, 2023) (available at https://thetexan.news/state/legislature/88th-session/texas-lawmakers-fail-to-pass-judicial-compensation-reform-in-legislative-session/article_4140210f-bb40-57a9-89ef-215a113be7fc.html). The House passed HB 2779, but the Senate, in the words of Senator Joan Huffman of Houston, "chose a different approach to adjust judicial compensation," instead proposing increases in judicial pay within the existing tiered structure. Within that rubric, judges with 4 years of service would have received \$154,000 and those with 8 years would have received \$168,000.

Either the House's or the Senate's approach would have been an improvement. But a stalemate developed between the two chambers, and somehow the session ended with no relief for judges whatsoever. Varying reports from Austin attribute the deadlock to ancillary issues: things like disagreements over bail reform and complicated links between judicial pay and legislative pensions. *Id.* But whatever the reason, the legislature did not get the job done.

Where to go from here?

So we remain where we were in 2013. Our judges still are underpaid by any measure. Political complications got in the way this time. We can't let that happen again. If we want to ensure a quality judiciary, Texas lawyers need to push for fair judicial compensation for those on the bench. Contact your state representatives and let them know where you stand.

If there is a way that the Litigation Section can serve you better, please do not hesitate to contact me. I can be reached at ggannaway@beckredde.com.

Sincerely,



Geoff Gannaway
Chair, Litigation Section

STATE BAR OF TEXAS

P.O. Box 12487

AUSTIN, TEXAS 78711-2487

Non-Profit Org.

U.S. Postage

PAID

Permit No. 1804

Austin, Texas

STATE BAR LITIGATION SECTION REPORT
THE ADVOCATE

