



REPORT OF THE WEST VIRGINIA JUDICIAL COMPENSATION COMMISSION

2019



West Virginia Judicial Compensation Commission

Gregory Bowman, Chair

Dr. Edwin Welch, Member

Phillip B. "Ben" Robertson, Member

Danny Martin, Member

Virginia King, Member

1900 Kanawha Blvd., East
Charleston, WV 25305

(304) 347-4800

http://www.wvlegislature.gov/Interims/judicial_comp.cfm

Table of Contents

THE WEST VIRGINIA JUDICIARY AND THE WEST VIRGINIA JUDICIAL COMPENSATION COMMISSION	1
CURRENT JUDICIAL SALARIES	2
FACTORS REQUIRED TO BE CONSIDERED BY THE COMMISSION	3
FACTOR 1: THE SKILL AND EXPERIENCE REQUIRED OF JUSTICES, CIRCUIT COURT JUDGES, FAMILY COURT JUDGES, AND MAGISTRATE.....	4
FACTOR 2: THE VALUE OF COMPARABLE SERVICE PERFORMED BY JUSTICES AND JUDGES, AS DETERMINED BY REFERENCE TO JUDICIAL COMPENSATION IN OTHER STATE AND IN THE FEDERAL GOVERNMENT	4
FACTOR 3: VALUE OF COMPARABLE SERVICES PERFORMED IN THE PRIVATE SECTOR, INCLUDING PRIVATE JUDGING, ARBITRATION, AND MEDIATION	8
FACTOR 4: THE COMPENSATION OF ATTORNEYS IN THE PRIVATE SECTOR.....	8
FACTOR 5: COST OF LIVING	9
FACTOR 6: THE COMPENSATION PRESENTLY RECEIVED BY OTHER PUBLIC OFFICIALS IN THE STATE ...	12
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	12
FACTOR 8: ANY OTHER INFORMATION THE COMMISSION MAY FIND RELEVANT IN ITS MISSION TO DETERMINE THE APPROPRIATE COMPENSATION FOR THE STATE’S JUDICIAL OFFICERS.....	13
CONCLUSIONS AND RECOMMENDATIONS.....	15

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.¹ 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 82nd Legislature, effective June 10, 2016. It is composed of five members, 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 believes that its purpose is to provide a market analysis of the fair and appropriate compensation of the judicial officers included in the statute. The Commission understands that it is not within its scope to consider changes to the organizational structure, numbers of positions, or jurisdictional scope of the judiciary, or other financial issues unrelated to compensation. The Commission will provide the Legislature with the best market analysis possible for its consideration in making decisions regarding judicial compensation.

¹W.Va. Const. Art. VIII.

The minutes of the Commission’s meetings are available on the Commission’s webpage at: http://www.wvlegislature.gov/Interims/judicial_comp.cfm.

CURRENT JUDICIAL SALARIES

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 \$94,500.² 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 2019, see chart below.*

CURRENT JUDICIAL SALARIES	
Supreme Court Justices	\$136,000
Circuit Court Judges	\$126,000
Family Court Judges	\$94,500
Magistrates	\$57,500

²W.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.³

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.

³W.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.⁴ Circuit court and family court judges must have been admitted to practice law for at least five years prior to their election.⁵ Magistrates are required to be at least twenty-one 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 thirty-four years, ranging from twenty-nine to forty-five years of admission. The seventy-five current circuit court judges have been admitted to practice law in this State for an average of thirty-three years, ranging from thirteen to fifty-seven years of admission. The forty-seven current family court judges have been admitted to practice law in this State for an average of twenty-seven years, ranging from ten to forty-four years of admission. This review demonstrates that individuals with significant experience are, and remain, attracted to the bench. It is essential that such talent continue to be attracted to the bench, as well as be retained, and it is the view of the Commission that judicial compensation should be adequate to do so.

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.⁶ The NCSC also provides information on the “normalized” salaries of judges. This normalized data 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.

⁴W.Va. Const. Art. VIII § 7.

⁵W.Va. Const. Art. VIII §§ 7 and 16; W.Va. Code § 51-2A-4.

⁶See <https://www.ncsc.org/~media/Microsites/Files/Judicial%20Salaries/Judicial-Salary-Tracker-Jan-2019.ashx>

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. *These figures are listed in the charts below.*

Salaries of Judges in West Virginia’s Surrounding States as of July 1, 2019

State	Highest Court Salary - Rank	Intermediate Appellate Court Salary - Rank	General – Jurisdiction Court	General Jurisdiction Using COLA
West Virginia	\$136,000 – 53	N/A	\$126,000 - 53	\$129,535 - 47
Kentucky	\$142,362 - 50	\$136,631 - 41	\$130,926 - 51	\$137,288 - 39
Ohio	\$172,200 – 33	\$160,500 - 29	\$147,600 - 37	\$155,485 - 17
Maryland	\$186,433 – 21	\$173,633 - 18	\$164,433 - 24	\$125,405 – 49
Virginia	\$202,896 - 11	\$186,426 - 12	\$175,826 - 14	\$165,095 – 10
Pennsylvania	\$211,027 - 7	\$199,116 - 6	\$183,184 - 11	\$171,061 - 6

Salaries of Judges in Similarly Populated States as of July 1, 2019

State	Highest Court Salary - Rank	Intermediate Appellate Court Salary - Rank	General – Jurisdiction Court	General Jurisdiction Using COLA
West Virginia	\$136,000 – 53	N/A	\$126,000 - 53	\$129,535 - 47
New Mexico	\$148,207 – 48	\$140,797 - 40	\$133,757 - 48	\$131,520 – 45
Nebraska	\$176,299 - 26	\$167,484 - 23	\$163,077 - 24	\$165,631 – 9
Idaho	\$155,200 - 41	\$145,200 - 35	\$139,200 - 43	\$142,870 - 31
Hawaii	\$229,668 - 4	\$212,784 - 4	\$207,084 - 5	\$153,373 - 20

West Virginia’s justices and circuit court judges are among the lowest paid in the United States and its territories, ranking 53rd of 55.⁷ West Virginia is the lowest paid among the states compared above. Factoring in the cost of living, West Virginia judges are ranked 47th in the country, which is the second lowest salary of the states compared above.

To determine the national trends in judicial compensation, the Commission compared the mean and median judicial salaries from July 1, 2018 to July 1, 2019. The mean and median increase in salary for Highest Courts, which are equivalent to the West Virginia Supreme Court of Appeals, and General Jurisdiction Courts, which are equivalent to West Virginia’s circuit courts, is 1.45% and 1.38%,

⁷ The data is ranked from numbers 1 to 55, which includes all 50 states, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

respectively. The Commission concluded that this information was important to, and should be incorporated in, the current report’s findings.

It is also useful to compare West Virginia judicial salaries to the mean and median judicial salaries of the states listed above. *These mean and median figures are listed in the following chart.*

West Virginia, Mean, and Median	Highest Court Salary	Intermediate Appellate Court Salary	General – Jurisdiction Court
West Virginia	\$136,000	N/A	\$126,000
Mean Salary	\$178,346	\$170,171	\$160,069
Median Salary	\$172,998	\$169,212	\$160,000

As a part of its analysis of total compensation of judicial officers, the Commission also considered facts regarding each state’s judicial retirement plan in its analysis. Attachment A to this report contains information regarding the type of retirement benefit plans offered to judges, their required contributions to the plans, and the amount of benefits that a judge can expect to receive upon retirement. Upon comparing West Virginia’s judicial retirement benefits with those of the surrounding states, the Commission concludes that those retirement benefits are fair and comparable to the other states.

The Commission also sought information with which to compare West Virginia’s family court judge salaries. West Virginia’s family court judges hear cases involving divorce, annulment, separate maintenance, paternity, grandparent visitation; issues involving allocation of parental responsibility; and family support proceedings except child abuse and neglect proceedings. The NCSC has identified 33 states as having a “family court”, however, upon further review these courts have a wide variation in their duties and jurisdiction.⁸ Further, the NCSC does not collect salary information for family court judges. However, the Court has provided information to the Commission that West Virginia’s family law judges are the only judges in the nation whose position requires a law degree, yet pays less than \$100,000 per year. The Commission concludes that this information is relevant to its analysis.

The Commission also sought information by which to compare West Virginia’s magistrate salaries with equivalent courts. The NCSC gathers information about the nation’s courts of limited jurisdiction, which include municipal, district, justice, and magistrate courts. Because of the differing jurisdictions of these courts, it is difficult to make direct comparisons between courts in different states.

⁸ In Alabama, for example, family court is used interchangeably with juvenile court and has jurisdiction over nearly all matters involving minors, including delinquency, paternity and child support matters. Wisconsin’s family courts handle only divorce, paternity, and child support cases. Others, such as Vermont, have a family court for each county which handles all family-related matters, including abuse and neglect cases.

One major difference between these courts is the educational background required to serve in the role of magistrate, justice of the peace, or judge. West Virginia is one of only eleven states⁹ in the country that do not require a law degree to serve as a magistrate. The Commission sought to compare those states as the most similar to West Virginia magistrate court judges. Of those states, only Pennsylvania and Delaware have fixed salaries, at \$91,957 and \$75,488, respectively.¹⁰ The remainder of the states' salaries are based upon productivity, population, or established by the county that court serves. Because of the wide variation in methods to determine magistrate salaries, the Commission concludes that the information available results in a speculative average and should be given limited value to its overall analysis.

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 has chosen to rely more heavily on state judicial salaries in its recommendations. Due to the inherent differences between state and federal government, federal judicial salaries do not carry the same weight as judicial salaries in other states, particularly those in other states similarly situated to our own. The Commission does note, however, that judicial salaries at the federal level have increased annually since 2013, and that such regular increases may help attract and retain quality federal judicial appointees. *See the following chart.*

Year	District Judges	Circuit Judges	Associate Justices	Chief Justice
2019	\$210,900	\$223,700	\$258,900	\$270,700
2018	\$208,000	\$220,600	\$255,300	\$267,000
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

⁹ Arizona, Delaware, Georgia, Mississippi, Montana, New York, Pennsylvania, South Carolina, Texas, West Virginia, and Utah.

¹⁰ Both Delaware and Pennsylvania's judges are among the highest paid in the country, with their highest court judges earning approximately \$200,000 per year.

FACTOR 3: VALUE OF COMPARABLE SERVICES PERFORMED IN THE PRIVATE SECTOR, INCLUDING PRIVATE JUDGING, ARBITRATION, AND MEDIATION

The Commission requested information from the American Arbitration Association (AAA) regarding pay information private sector arbitrators. According to AAA, there is not good “salary” information on arbitrators, because most arbitrators are engaged in other types of private legal work and handle arbitrations as only a portion of their full-time practice. However, AAA indicated that the standard rate for arbitrators in West Virginia is \$300 per hour.

The same barrier to identifying regional mediator salaries also exists, as there are only a handful of attorneys in West Virginia who dedicate their practice full-time to mediation. Among these mediators, a rate of \$230-400 per hour is charged. The lower rates were reported by a Morgantown mediator, and the higher rate was attributed to a Charleston-area mediator.

After reviewing the information received regarding both arbitrator and mediator compensation, the Commissioners determined that it was not sufficiently helpful and should be given very limited weight in its overall analysis.

FACTOR 4: THE COMPENSATION OF ATTORNEYS IN THE PRIVATE SECTOR

The Commission reviewed data from several sources regarding compensation of attorneys in the private sector. First, the Commission reviewed data collected by the Department of Labor’s Bureau of Labor Statistics (BLS) regarding wages of West Virginia attorneys.¹¹ According to the BLS’s May 2018 data, attorneys in West Virginia earned an annual mean wage of \$98,630. However, this information averages all attorney salaries, regardless of experience level.

Obtaining information regarding salary levels of attorneys in private practice in West Virginia based on years of experience is more difficult. Information collected by the National Association of Law Placement (NALP) does provide some insight, however. NALP compiles data on attorney salaries for attorneys with up to eight years of practice experience, but not for attorneys with more than eight years of practice experience. Also, while NALP does not have data specific to West Virginia, it does collect information on a regional basis. NALP’s “South” region includes the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Washington D.C., and West Virginia.

The average years of practice experience among members of the West Virginia bench greatly exceeds the eight-year limit of the NALP data, and the NALP data covering West Virginia is for a geographic region that is significantly larger than West Virginia. Nonetheless, this data does provide a relevant, if not clearly precise, benchmark for the Commission to use in its analysis.

¹¹ See https://www.bls.gov/oes/current/oes_wv.htm#23-0000.

In the 2019 report, NALP’s South region data is reported both with salaries from the largest metropolitan cities of Atlanta, Baltimore, Charlotte, Dallas, Houston, Miami, Raleigh/Durham, Tampa, Washington D.C., and Wilmington, and without those cities. Because large city attorney salaries tend to be significantly higher than those in smaller cities, and because West Virginia does not have cities as large as those listed in this NALP region, the Commission believes that NALP data that excludes salaries from these metropolitan areas is more relevant to the Commission’s work. Additionally, the data that excludes those largest specific metropolitan areas is further broken down based upon population. The smallest population designation is areas with fewer than 1.5 million residents, and the Commission believes that smallest designation most closely fits the West Virginia market. The average salary for attorneys with eight years of practice experience reported by NALP for the South region, minus the largest city salaries, in areas with a population of fewer than 1.5 million, is \$163,259.

NALP’s South region data is also separated by law firm size. In West Virginia, most “big law” firms fall into NALP’s 51-250 lawyer firm category. In the 2017 report, the average salary for attorneys with eight years of practice experience reported by NALP for the South region, minus the large city salaries, in firms of 51-250 attorneys, is \$146,522. The Commission recognizes and appreciates that some lawyers in smaller firms may make significantly higher salaries than their private practice counterparts in larger firms—and in fact the higher average salary (including smaller firm attorneys) reflects this. However, nationally (and regionally), private practice attorneys in larger firms tend to make, on average, more than their counterparts in smaller firms, and this may be relevant to the Commission’s analysis.

NALP Private Practice Salary Data for Attorneys in Private Practice with Eight Years of Practice Experience	
NALP South Region: Average Salary for Attorneys with 8 Years of Practice Experience (2019 Report)	\$163,259
NALP South Region: Average Salary for Attorneys with 8 Years of Practice Experience, Minus Large Cities, in Firms of 51-250 Attorneys (2017 Report)	\$146,522

FACTOR 5: COST OF LIVING

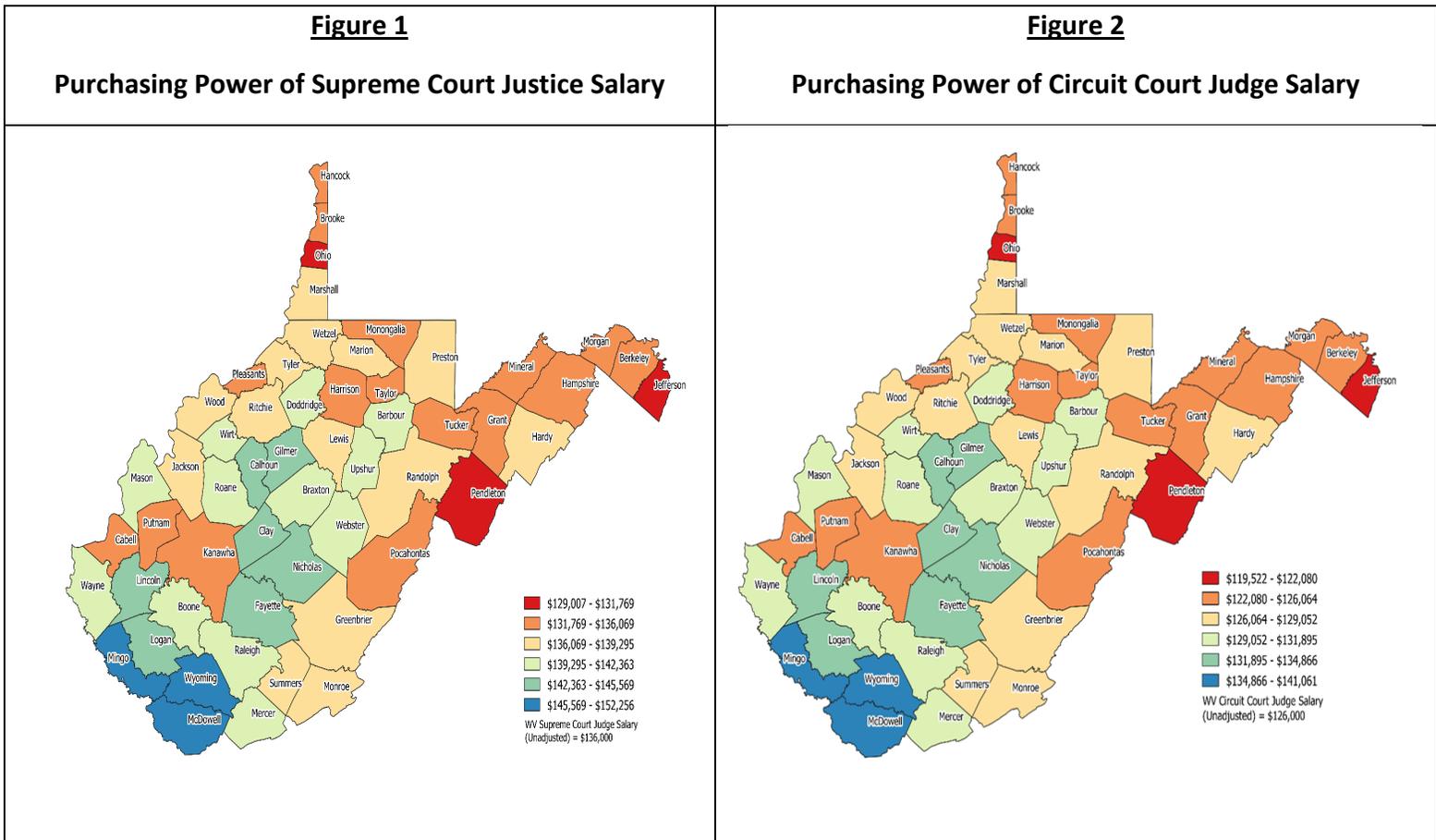
The Commission considered various sources of information regarding West Virginia’s cost of living compared to neighboring states and the national average. U.S. News and World Report’s yearly Affordability Rankings¹² considers West Virginia as the 8th most affordable state in the nation. The

¹² See <https://www.usnews.com/news/best-states/rankings/opportunity/affordability>.

Affordability ranking is based upon both the cost of living and housing affordability of the states.¹³ This statistic is a good indicator of the overall affordability and cost of living in West Virginia.

In its semi-annual report on judicial compensation, the NCSC includes rankings of the salaries of circuit court judges based upon the cost of living. Although West Virginia is considered one of the most affordable states in the country, the salaries of circuit court judges are still ranked 47th in the nation.

The Commission also considered cost of living information specific to the supreme court justices, circuit court judges, family court judges, and magistrates. As previously stated, judicial salaries are set forth by statute and constant throughout the state. Their relative purchasing power, however, differs across counties due to cost of living differentials. Figures 1 through 4, below, demonstrate the differences in purchasing power across the state. Generally, the northern and eastern panhandles have lower purchasing power as compared to southern West Virginia counties. The Commission finds this information relevant to its analysis.



¹³ Cost of Living information is based upon the Council for Economic Research measures cost of living based on a composite of price information from participating cities and metropolitan areas in each state. The most recent analysis is from 2018.

Figure 3

Purchasing Power of Family Court Judge Salary

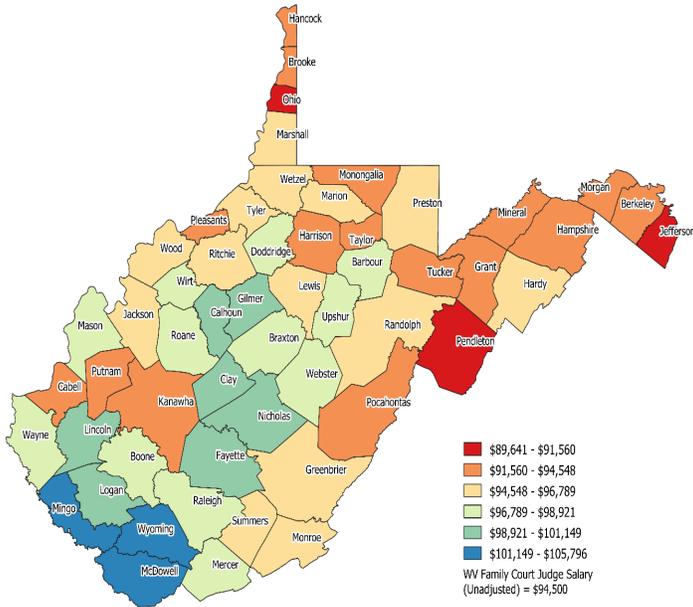
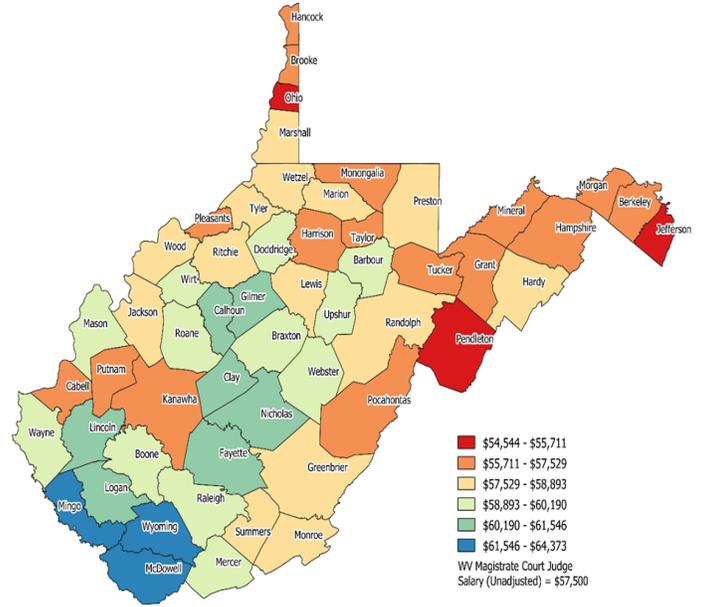


Figure 4

Purchasing Power of Magistrate Salary



The Commission also considered information on median values of homes in the United States and around the region. See the chart below.



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 salaries of other public officials and workers in the state as of January 2019, with the exception of higher education, shows that in that year only 33 public officials and workers were paid more than supreme court justices, and only 40 public officials and workers were paid more than circuit court judges. Those individuals with salaries higher than justices and circuit court judges included the governor (with an annual salary of \$150,000) and twenty-three medical doctors working for the Divisions of Health or Rehabilitative Services. Public officials with salaries lower than supreme court justices and circuit court judges included the treasurer and auditor.

The Commission also examined information comparing national trends in judicial salaries at the highest court level versus governors' salaries. Upon review of data from 2019, the average high court judge salary was \$179,570, as compared to the average Governor salary of \$139,942. West Virginia's salaries, at \$136,000 and \$150,000, respectively, do not follow the national trends that the highest court judges earn approximately \$40,000, or 30 percent, more than the Governor. The Commission finds this information relevant to its efforts to adjust judicial compensation appropriately.

As noted in the discussion of Factor 2 in this report, which compares judicial compensation throughout the county, the Commission believes that it is essential that judicial salaries be set at levels that adequately attract and retain future generations.

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

The Commission viewed the analysis required by the first six factors to be relevant to the analysis of the seventh factor. Based on those analyses, the Commission concludes that regular, periodic adjustments in compensation are both necessary and appropriate in order to attract and retain 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.

Attracting judges from a diversity of life and professional experiences is necessary in order to have a state judiciary with broad and deep experiences that are reflective of our society as a whole.

Having a judiciary that is not affected by financial concerns is also essential. The rule of law—and thus the political and social fabric of our society—is imperiled if the citizens of our state do not see the judiciary as qualified and experienced, and also if judges in our state cannot serve without financial hardship and the risk that their judicial independence might be compromised by financial concerns.

Therefore, the Commission recommends that judicial 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 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 per year.

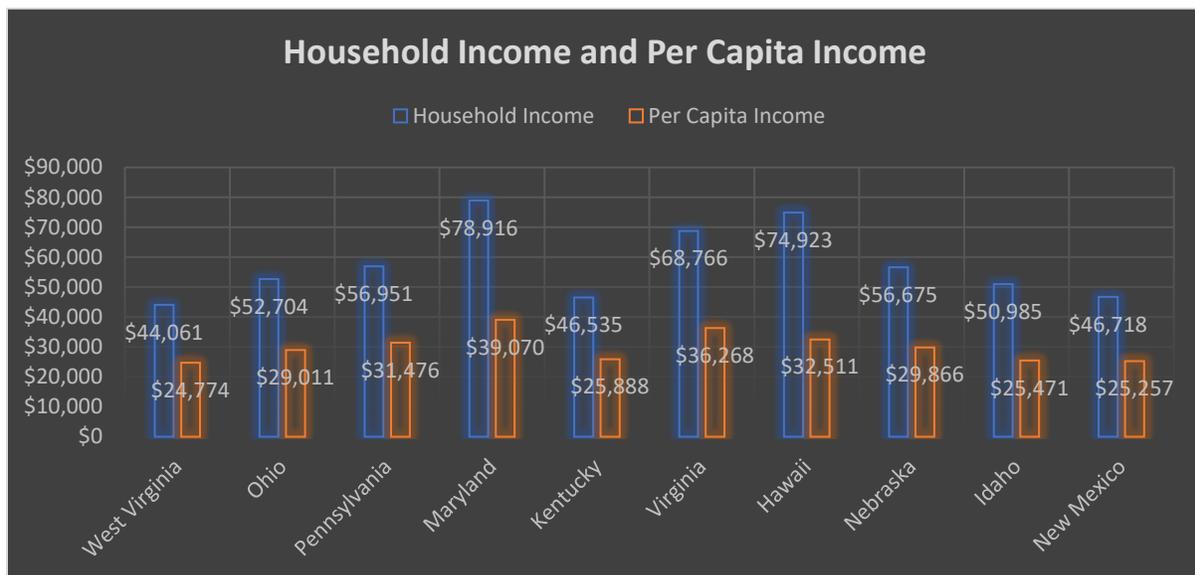
In preparation for the 2018 Report, Circuit Court Judge Derek Swope provided updated compensation information for the supreme court justices and the circuit court judges. In addition, Family Court Judge Derek Tallman provided information on behalf of the Family Court Judges Association.

The Commission also considered information from the U.S. Census Bureau regarding the growth and decline of population in the states examined for Factor 2. See the following chart:

Geographic Area	Population Estimate (as of July 1)		Change, 2017 to 2018		National Ranking of Regions and States			
	2017	2018	Number	Percent	Population Estimate (as of July 1)		Change, 2017 to 2018	
					2017	2018	Number	Percent
West Virginia	1,817,048	1,805,832	-11,216	-0.6	38	38	49	51
Virginia	8,465,207	8,517,685	52,478	0.6	12	12	13	20
Ohio	11,664,129	11,689,442	25,313	0.2	7	7	19	37
Pennsylvania	12,790,447	12,807,060	16,613	0.1	5	5	25	39
Kentucky	4,453,874	4,468,402	14,528	0.3	26	26	26	29
Maryland	6,024,891	6,042,718	17,827	0.3	19	19	24	30
Nebraska	1,917,575	1,929,268	11,693	0.6	37	37	29	21
Hawaii	1,424,203	1,420,491	-3,712	-0.3	40	40	47	48
Idaho	1,718,904	1,754,208	35,304	2.1	39	39	17	2
New Mexico	2,093,395	2,095,428	2,033	0.1	36	36	39	40

These figures show that West Virginia is one of two states in the comparison that is losing population, and it is losing population at a much higher rate than the other negative growth state, Hawaii.

Finally, the Commission considered information from the U.S. Census Bureau regarding the 2017 median household income and per capita income in West Virginia and the states examined in Factor 2. See the following chart:



The information indicated that West Virginia has the lowest median household income, and lowest per capita income of the states in the comparison.

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. To date, judicial compensation in West Virginia has been determined on an ad hoc basis, which has resulted in adjustments being made approximately every five to six years. This ad hoc approach has resulted in a lack of predictability in ensuring that judicial compensation is sufficient to attract and retain a competent and well-qualified judiciary.
- Regular, systematic increases in judicial compensation are both necessary and appropriate in order to achieve and maintain appropriate judicial compensation. Such regular, systematic increases would make judicial compensation more predictable and are essential to ensure that judicial compensation remains at levels sufficient to attract and retain a competent and well-qualified judiciary.
- 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 further reinforces the importance of setting judicial compensation at levels that are adequate to attract competent and well-qualified persons to the judiciary.
- 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 53rd among the 55 states and U.S. Territories. The cost of living places West Virginia at 47th of the 50 states.
- The mean and median salary for high court judges in the states examined in Factor 2 is \$176,029 and \$174,249, respectively.
- The mean and median salary for circuit court judges in states examined in Factor 2 is \$157,087 and \$155,338, respectively. When factoring in the cost of living, the mean and median are \$147,726 and \$148,122, respectively.
- The national mean and median raise for state supreme court justices and circuit court judges from July 2018 to July 2019 was 1.45% and 1.38%, respectively.

- The Commission was unable to determine the mean and median salaries for family court judges due to the lack of comparable courts throughout the country.
- The Commission was unable to determine the mean and median salaries for magistrates due to the very limited number of comparable courts and wide variation in how those salaries are determined within those courts.
- The salaries of attorneys with eight years of private practice experience in West Virginia and the surrounding region indicate that the salaries of Supreme Court and Circuit Court judges are below the salaries of such attorneys.
- West Virginia's judicial retirement benefits are fair and comparable to those in the surrounding states and states with similar population.
- High court judge and Governor salaries throughout the nation average \$179,000 and \$139,000, respectively. West Virginia's Supreme Court Justices and Governor earn \$136,000 and \$150,000, respectively. The Commission finds that West Virginia does not follow the national trend that its Supreme Court Justices earn approximately 30% more than the Governor.
- The 2014 West Virginia Circuit Judge Workload study, performed by the National Center for State Courts, concluded that the state needed eighty-nine judges to perform the work performed by the seventy judges on the bench.
- The Supreme Court's caseload has fallen by fifty percent in the last fifteen years. However, because of revision to the Rules of Appellate procedure, which guaranteed the right to an appeal, the Supreme Court's workload has increased to address this change in rules.
- Currently, the opioid epidemic in West Virginia has increased the workload demands on all levels of West Virginia's judicial system.
- If West Virginia's population continues to decline, this may result in a decreasing workload for the judiciary as a whole.

Recommendations

In its 2018 report, the Commission made various recommendations to adjust judicial salaries according to both the market information and the cost of living. Those figures from the 2018 report remain relevant to achieving appropriate judicial compensation in West Virginia.

For its 2019 recommendations, the Commission is taking a more streamlined approach and is recommending a single raise amount for each type of judge. This single raise amount is the 2022 salary amount recommended in the Commission’s 2018 report. (The recommendations chart from the 2018 report is set forth at the end of this section for reference.)

Based upon a 5-0 vote, the Commission recommends that the salaries of the justices, circuit court judges, family court judges, and magistrates be increased as set forth below:

Judicial Officer	Current Salary	Percentage Increase	Recommended Salary
Justice	\$136,000	18.3	\$160,894
Circuit judge	\$126,000	18.3	\$149,069
Family Court judge	\$94,500	20.56	\$113,930
Magistrate	\$57,500	18.3	\$68,028

The Commission is making these recommendations in order to adjust judicial salaries in West Virginia to reflect national mean and median increases over the recent past and through the next several years, and thus prevent West Virginia’s judicial salaries from falling further behind what this Commission recommended in its 2018 report. If adopted, the Commission’s recommended salaries would rank West Virginia’s Supreme Court Justices and Circuit Court Judges at 37th and 36th of the 55 states and territories included in the NCSC’s July 2019 report.

2018 Judicial Compensation Commission Report recommendation. This chart is for reference **only.*

Judicial Officer	Current Salary	2019 Increase	2019 Salary	Increase for the next 3 Years	2020 Salary	2021 Salary	2022 Salary
Justice	\$136,000	8.27%	\$147,241	3%	\$151,658	\$156,208	\$160,894
Circuit judge	\$126,000	8.27%	\$136,420	3%	\$140,513	\$144,728	\$149,069
Family Court judge	\$94,500	10.33%	\$104,262	3%	\$107,390	\$110,612	\$113,930
Magistrate	\$57,500	8.27%	\$62,253	3%	\$64,123	\$66,047	\$68,028

Attachment A – 2019 Judicial Compensation Commission Report

State	Type of Benefit Plan	Amount of required contribution to Plan?	Mandatory Retirement Age	Requirements for normal retirement?	Retirement Benefit
West Virginia	Defined Benefit	From 7.0% to 10.5% set Annually by Actuarial Report	None	Elected prior to 2005 - 12 years of actual service as a judge, 4 may come from military service or service as a prosecutor if the latter was served prior to 1988. Judge / Justice who has reached the age of 65 with 16 years credited service may retire with full benefits. Judge / Justice who has reached the age of 62 with 16 years credited service may retire with lesser benefits. A Judge / Justice with 24 years credited service may retire at any age.	Elected prior to 2005 - 75% of salary of current sitting judge or justice, and can be increased or decreased on an annual basis depending on this salary amount. Elected after 2005 - 75% of average of a set number of previously earned salaries at date of retirement, no increases or decreases.
Ohio	Defined Benefit	10%	70	55 with 25 years of service, 60 with 5 years of service, any age with 30 years of service. Reduced benefits available at 55 if do not have 30 years of service	Percentage of Final Average Salary. Highest 3 years.
Pennsylvania	Defined Benefit	A judge contributes 10% of his or her salary for the first 10 years and 7.5% for all subsequent years.	70	Superannuation Pension – age 60 with 3 years of service or any age with 35 years. Early pension – under age 60, judges vest after 5 years of service and can receive a reduced pension. Disability pension – minimum service of 5 years & must meet medical requirements	4% x first 10 years x Final Average Salary, 3% x all subsequent years x Final Average Salary. Final Average Salary is average of three highest periods of four consecutive calendar quarter salaries. An early retirement factor is applied to the formula if below superannuation age.
Kentucky	Defined Benefit (Prior to January 1, 2014) Defined Contribution (January 1, 2014 forward)	Defined Benefit - A judge contributes 6% of his or her salary.	None	Benefits are payable to a vested member. For the Defined Benefit Plan, vesting is achieved after eight years of state service. For the Hybrid Cash Benefit Plan, vesting is at (a) At age sixty-five (65) with accumulation of five years of active service credit in the Plan and any other state-supported retirement system of the Commonwealth; or (b) At least age fifty-seven (57) and the member's accumulated active service credit in the Plan and any other state-supported retirement system of the Commonwealth plus his/her age is at least eighty-seven (87).	For the Defined Benefit Plan, a pension cannot exceed 100% of final compensation. Final Compensation is the average of the 60 months of salary preceding the date of separation of service.
Maryland	Combination of Defined Benefit and Defined Contribution	8%	70	Age: mandatory retirement at age 70; minimum retirement age is 60. Service: eligible to retire at age 60 with 16 years of creditable service.	2/3 of annual salary of active judge. The maximum service credit that may accrue in the Judges' Retirement System is 16 years. With 16 years of service, you receive 2/3 of the salary of an active judge at the time of your retirement. With less than 16 years, your benefit is calculated as follows: (.666667 x Salary of active judge) x (creditable service/ 16) = Annual Basic Allowance.

Attachment A – 2019 Judicial Compensation Commission Report

Virginia	Defined Benefit and Defined Contribution	5%	70	50/10, 55/5, 60/30 or 65/5 for Plan 1 Judges; 60/5, normal Social Security Age with at least 5 years of service or Rule of 90 (Judges Age and Service Credit equal 90) for Plan 2 and Hybrid	Age, Service Credit and the Highest 36 for Plan 1 Judges or 60 consecutive months of service for Judges under Plan 2 or Hybrid.
New Mexico	Combination of Defined Benefit and Defined Contribution	10.50%	None.	Magistrate Plan vesting at 8 years, retirement any age and 24 years or age 65 and at least 8 years. Judge Plan vesting 8 years, retirement at age 60 with at least 15 years or age 65 with at least 8 years.	Magistrate Plan (non-lawyer, limited jurisdiction state courts) annual service credit 3.0% per year of service up to maximum 85% of final 5-year salary average. Judge Plan (general jurisdiction and appellate courts) annual service credit 3.25% up to maximum of 85% of final 5-year salary average.
Nebraska	Defined Benefit	Judges on bench on or after 7/1/04 that elected enhanced benefits: 9% if less than 20 yrs. service, 5% with 20 or more yrs. service. Judges on bench before 7/1/04 not following provisions above: 7% if less than 20 years service, 1% if 20 or more years service.	None.	Age 65 required for full benefit. 62-65, benefit is reduced by 3-9%. 52-62 benefit is actuarially reduced.	Lifetime monthly retirement benefits are based on this formula: Average 3 highest 12-month periods of compensation x Creditable Service Years x Formula Factor (3.5%). Maximum benefit is 70% of final average compensation.
Idaho	Combination of Defined Benefit and Defined Contribution	A judge contributes 10.23% of his or her salary for twenty years,	None.	Age 65, 4 years of service. Age 60, 10 years of service. Age 55, 15 years of service. Any Age, 20 years of service.	For each year in the first ten years of service, The judge receives 5% per year of service, up to 50%. For each year in the second ten years of service, the judge receives 2.5% per year of service. The total maximum retirement benefit is 75% of the highest salary. If approved for Plan B senior judge service, 12.5% will be added to your retirement up to the 75% maximum.
Hawaii	Defined Benefit	Appointed as a Judge on or after July 1, 2012: 9.8% of his or her salary. Appointed as a Judge prior to July 1, 2012: 7.8% of his or her salary.	70	Appointed prior to July 1, 1999: Any age with 10 years of mixed service (no pension reduction for service as judge; 5% age reduction penalty applied to "other" service if below age 55). Appointed after June 30, 1999: Any age with 25 years of mixed service (5% age reduction penalty applied to all service if below age 55) Mixed service = includes a combination of Judge service and other service. Appointed prior to July 1, 2012: Full Retirement: Age 55 with 5 YOS (mixed service) Appointed on or after July 1, 2012: Full Retirement: Age 60 with 10 YOS Early Retirement: Age 55 with 25 YOS (5% age reduction penalty for each year below age 60)	If appointed as a Judge on or after July 1, 2013: Average Final Compensation (AFC) x 3.-% x Years of Service (YOS). (AFC = 5 highest years of base pay excluding lump sum vacation pay.) Also receive an annuity equal to the actuarial equivalent of judge's accumulated contributions made to the retirement system while serving as a judge. If appointed as a Judge prior to July 1, 2012: AFC x 3.5% x YOS (AFC = 3 highest years of gross pay excluding any lump sum vacation pay.) Also receive an annuity equal to the actuarial equivalent of a judge's accumulated contributions made to the retirement system while serving as a judge.