

# BRIEFS

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Email your letter, including your full name and title, with *Attn: Editor* in the subject line, to [judicature@law.duke.edu](mailto:judicature@law.duke.edu).

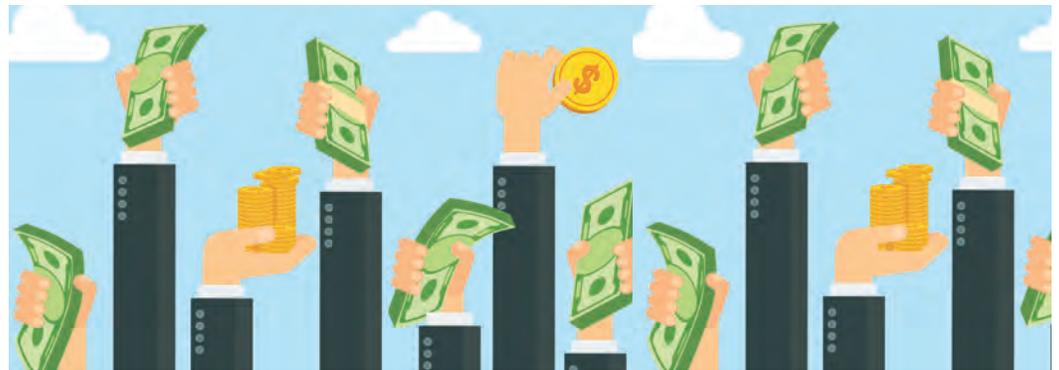
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from THE NATIONAL CENTER FOR STATE COURTS



## Salary by committee

*Half the states use a commission to set judicial pay, but methods vary*

**A**s the Great Recession ends, judicial salaries – stagnant for most of that period – appear to be on the rise. But a long-running debate over the role of judicial compensation commissions – a debate that took on particular import during the recession – persists. While many states have some sort of commission system, they vary widely in terms of structure, organization, role, and power.

**Ad hoc or permanent?** Today 25 states have some sort of statutorily or constitutionally created commission that examines judicial salaries. These bodies are standing entities but not always permanent; several states who do not have them now have had them in the past. Amid the Great Recession at least three states saw their commissions repealed: Illinois' Compensation Review Board (2009), Indiana's Public Officers Compensation Advisory Commission (2011), and Iowa's Judicial Compensation Commission (2008). Beyond these 25, several states have opted in the recent past for ad hoc bodies that meet only for a specific time period or are created by the judiciary itself.

**Does the commission examine judiciary compensation only or that of other branches as well?** Another key consideration for these entities has been the question of whether they are designed to look only at judicial compensation or also those of other elected officials. What starts

as legislation introduced to create a judicial compensation commission can be, and has been, amended to create a body to instead include oversight of pay for state legislators and executive branch officials. This has in many states meant judicial compensation discussions are wrapped up in debates over compensation for other officials, resulting in stalemates. Connecticut in 2012 attempted to solve this by pulling the judiciary out of the state's Compensation Commission and into a new Commission on Judicial Compensation. Of the 25 states with standing commissions, 11 are specifically tasked with looking at judicial salaries only.

**Is the compensation change for the judiciary only or for other branches as well?** Even in states that specifically limit their compensation commission to look only at issues related to the judiciary, the adoption or implementation of recommendations is often tied to other officials. Oklahoma's Board of Judicial Compensation examined salaries for appellate and general jurisdiction (district court) judges in the state. However, in the 1990s the legislature had enacted laws that directly tied state and some county officials' salaries to those of judges. The governor received the same salary as the chief justice, district attorneys received 98 percent of the salary of a district judge, etc. The result was ▶

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no increase for judges for almost a decade. In 2014 the situation came to a head when state executive branch leaders balked at accepting salary increases. The legislature followed along and approved increases only for district courts (and by extension district attorneys), resulting in trial judges making more than some of their appellate counterparts. In 2015, Oklahoma's legislature repealed the laws that linked salary increases and gave nonjudiciary public officials their own compensation commission. In the same week Oklahoma's legislature was finalizing that shift away from salary linkages, Colorado's legislature passed a plan to create salary linkages. Starting in 2019, Colorado's governor will receive a salary equal to 66 percent of that given to the state's chief justice, while legislators will receive 25 percent of the salary of county judges in "Class B" counties.

**Is the commission's recommendation binding?** A key element to commission systems is the power of the commission's report. Provisions that allow for the legislature to be bypassed or that make it difficult for legislators to override commission recommendations have proven to be particularly contentious. Of the 25 states with commissions, 15 make the recommendations advisory. Eight states provide that the commission's report is binding unless specifically overridden or amended by either a simple majority of the legislature or, in the case of Missouri, a two-thirds supermajority. Washington State provides for an override by voter referendum. Finally, Arkansas voters in 2014 approved a constitutional amendment that gives the state's Independent Citizens Commission the power to set judicial and other salaries and provides no power to override the commission's determination.

West Virginia's Judicial Compensation Commission, created in 2016, is a case study in this area. As introduced, the commission's recommendation would have been binding unless rejected by 60 percent of the House and Senate. The Senate removed the binding-unless-overridden provision

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and replaced it with a guarantee that the recommendation "shall be introduced" as a bill by the presiding officers of the House and Senate into their respective chambers within 20 days of the start of the next legislative session. The House further watered down this provision; as ultimately enacted, a bill based on the commission's recommendation "may be introduced" by the presiding officers.

**Could the commission recommend a diminishment?** While much of the focus of the commissions has been on the ability to effect increases in judicial compensation, some proposals have included the possibility that the commission would recommend a diminishment. In the case of Arkansas, the legislature's original draft language for the Independent Citizens Commission would have allowed for diminishment of the salary of any

public official, including judges; the adopted version prohibits the commission from reducing judicial salaries. A similar diminishment provision was approved by the Ohio Senate when it approved creation of a Public Office Compensation Commission in 2014. After judges in the state expressed concerns, the 2015 version of the bill would have allowed for diminishment of judicial compensation only in the event of a "fiscal emergency" declared by three-fifths of the legislature, signed by the governor, and resulting in the diminishment of compensation for all public officials.

**What should or must the commission look at?** In creating these commissions, many states also included criteria that a commission must consider in developing recommendations for judicial compensation. Most common among these are:

- the state's economic conditions at the time;
- the state's ability to fund any increases;
- the skill and experience required for a judgeship;
- the amount of time required for a judgeship;
- the state's interest in obtaining highly qualified and experienced attorneys to serve;
- inflation/cost of living in general or the Consumer Price Index in particular;
- compensation of judges in other states or specifically states in the region;
- compensation of federal judges;
- compensation for "comparable services" (arbitration and mediation) in the private sector;
- compensation of government sector attorneys;
- compensation of private sector attorneys;
- compensation of professionals in academia (e.g. law school deans and professors); and
- compensation of other state, county, or local officials.

— **WILLIAM E. RAFTERY** is the author of *Gavel to Gavel*, a National Center for State Courts blog that reviews state legislation affecting the courts. Find it at [gaveltogavel.us](http://gaveltogavel.us).