

**State of New Mexico**

**Judicial Compensation Commission**

**2022 Report**

To the Legislative Finance Committee  
and  
Department of Finance and Administration

## Introduction

In 2005, the Legislature enacted Senate Bill 263, now NMSA 1978, Section 34-1-10 (2005), creating the Judicial Compensation Commission (“Commission” or “JCC”), an independent six-member commission charged with recommending a compensation and benefits plan for New Mexico Judges to the Legislative Finance Committee and the Department of Finance and Administration. The JCC members for 2022 are:

**Camille Carey**, Dean of the University of New Mexico School of Law, statutorily designated as Chair of the JCC;

**Kathryn Brack Morrow**, appointed by the President Pro Tempore of the New Mexico Senate;

**Representative Damon Ely**, appointed by the Speaker of the New Mexico House of Representatives;

**Carolyn Wolf**, President of the State Bar of New Mexico, statutorily designated as a member; and

**Patrick Ortiz**, appointed by the Chief Justice of the New Mexico Supreme Court.

**Adam Flores**, appointed by the Governor of the State of New Mexico.

## Statutory Requirement

The JCC must annually “report to the legislative finance committee and the department of finance and administration its findings and recommendations on salaries for Judges and Justices.” NMSA 1978 § 34-1-10(G). Judicial compensation in New Mexico is set through a statutory formula based on the salary the Legislature sets for the Justices of the Supreme Court. NMSA 1978 § 34-1-9. The Chief Justice salary is set \$2,000 higher than the salary of a Justice. Each Judge of the Court of Appeals is paid a salary equal to 95% of the salary of a Supreme Court Justice. Each District Court Judge is paid 95% of the salary of a Judge of the Court of Appeals. Each Metropolitan Court Judge is paid 95% of the salary of a Judge of the District Court. Each Magistrate Judge is paid 75% of the salary of a Metropolitan Court Judge. Salaries for Chief Judges are set according to the same formula based on the Chief Justice’s salary. Judicial salaries are not adjusted for location. Each judge of the same type of court earns the same amount in any community in the state, regardless of size, docket, cost of living, or judicial experience. In 2015, the New Mexico Supreme Court adopted a policy of endorsing JCC recommendations. The Judicial Branch supports legislation in the 2023 session to accomplish the recommendations of the Legislature’s JCC.

## **Update on the 2022 Legislative Session**

The Commission recommended in its 2021 JCC report that district judge salary be brought to \$165,000, which was the long-standing target that the Commission had been pursuing. Due to the way judicial salaries are set by statute, justice salary would then be set at \$183,000. The general consensus was that this would increase state magistrate judge salaries at too high a level which might require an amendment to the salary statute. By the time the Commission's report was finalized, the Supreme Court had submitted a budget request to set justice pay at the level of a federal magistrate judge. The Commission endorsed the Supreme Court's budget request.

During the 2022 legislative session, judicial compensation increases were located in Sections 4 and 8 of House Bill 2. In Section 8, the Legislature approved a 7% increase for all judges and employees. The Legislature provided a 7% increase for state magistrate judges raising salaries to \$105,000.

In Section 4, which is the base budget of all the courts where general fund recurring money was located, the Legislature provided an additional 10% increase for all non-magistrate judges, totaling a 17% salary increase. Additionally, the Legislature also passed Senate Bill 2 which set justice salaries at the level of a federal magistrate judge and removed state magistrate judges from the statute that set state magistrate judge salaries at 75% of Metro Court judge salaries. The funding was placed in the Administrative Office of the Courts' (AOC) appropriation in Section 4. However, the Governor vetoed SB2 which had the effect of state magistrate judges also receiving a 17% increase, 10% of which was unfunded.

The Legislature also appropriated \$20 million to the judicial retirement fund. Both the judicial (JRA) and magistrate retirement funds (MRA) were a little more than 50% funded. In SB2, the state magistrates would have been moved into the PERA retirement fund eliminating the MRA.

## **FY 2023 Recommendations**

During the 2022 legislative session, the Legislature passed SB2 by a vote of 94-10 (Senate 36-4; House 58-6). SB2 included numerous provisions among which were statutory changes to remove state magistrates from the New Mexico judicial salary statute (section 34-1-9) and to set non-magistrate salaries under the revised statute by setting Justice pay at the same salary as New Mexico federal magistrate judges. Governor Lujan Grisham pocket vetoed SB2 without a message indicating any objection to the judicial salary provisions in the bill. JCC recommends the Legislature pass a bill containing provisions that mirror SB2 section 5, which accomplished both the goal of removing state magistrates from the salary statute and linking Justice pay to the pay of federal magistrate judges. JCC does not recommend a salary increase for state magistrate judges for FY24. The cost to implement JCC's recommendations is \$3,670,543, assuming the current pay level for federal magistrate judges remains the same.

# FY 2023 Salary Recommendations

## **Tie State Judge Salaries to Federal Magistrate Salaries**

The JCC recommends that the salary of Supreme Court Justices be increased by setting Justice pay at the level paid to the lowest level of federal judge, a federal magistrate, which is 92% of the pay of a federal district court judge. As of January 2022, the federal magistrate salary was \$205,528. This statutory change would increase the salary of New Mexico district court judges to \$185,489 due to the statutorily mandated salary regression steps in NMSA § 34-1-9. The salary of New Mexico Supreme Court Justices as of July 2022 (\$180,748) ranks 33 out of 55 United States jurisdictions based on salaries in other states and territories as of July 2022.<sup>1</sup> The fact that judges are paid less than lawyers with comparable experience as well as local and state management level employees has significantly reduced the Judiciary's ability to attract and retain judges with proficiency in civil law.<sup>2</sup>

Pay is a significant factor having an impact on the diversity of candidates who seek judicial office. Candidates with only criminal law experience have a steep learning curve when serving in districts where judges are expected to hear a diverse range of civil, family, juvenile, and criminal cases.

As noted in the JCC reports since 2017, the judiciary should reflect a diversity of legal backgrounds, including in the private sector and law firms, as well as government experience.

Our court system should be filled with judges who not only are intelligent, thoughtful, and faithful to the rule of law, but also bring diversity of experience and background ... The reality is that all judges bring into the courtroom their unique life experience, tempered by their oath to make decisions based on the law and the constitution. It's the integrity and judgment of those men and women that allow our constitutional democracy to move forward.<sup>3</sup>

In 2017, the New Mexico Bar Association commissioned its most recent lawyer compensation study. Survey respondents who identified themselves as a partner/shareholder reported an average salary of \$210,502, with sole practitioners reporting \$184,457. It is likely that private practice attorney salaries are higher today than was reported in 2017. The report indicates that attorneys charged the highest per-hour billing rate (a median of \$250) for civil litigation, business, contract law, and estate planning, which could explain why fewer of those performing this work are attracted by the salaries offered by the judiciary. Inquiries among civil practitioners about applying for judicial vacancies supports this explanation.

With the recommendation to increase a District Judge's salary to \$185,489 in FY24 the pay still would be less than the salaries of partners and solo practitioners in private practice, but the gap would be sufficiently narrowed to support the hope of attracting more candidates from civil practice and building a Judiciary with more diverse legal experience. Using salaries reported in the Bar's 2017 survey (now five years ago) with FY23 judicial salaries, the average partner in a law firm is paid 14% more than a Justice of the Supreme Court.

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<sup>1</sup> The Judicial Salary Survey by the National Center for State Courts (NCSC) reports judicial salaries for the 50 states, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands. Salaries are tracked for the Supreme Court, Intermediate Appellate Court (in the 42 states and territories that have a Court of Appeals), and District Courts (courts of general jurisdiction), as well as the cost-of-living adjusted salary and ranking of District Courts. The current survey can be found at: [https://www.ncsc.org/\\_data/assets/pdf\\_file/0040/79798/JSS-July-2022.pdf](https://www.ncsc.org/_data/assets/pdf_file/0040/79798/JSS-July-2022.pdf).

<sup>2</sup> The Economics of Law Practice in New Mexico, *Lawyer Compensation*, May 2017, Research & Polling, Inc.

<sup>3</sup> Yvette McGee Brown, former Ohio Supreme Court Justice, Forward to [Building a Diverse Bench: A Guide for Judicial Nominating Commissioners](#), Brennan Center

## FY2023 Salary Recommendation (cont.)

The experience of Judicial Nominating Commissions during 2021-22 confirmed previous findings regarding judicial applicants. A 2016 review of all 309 judicial candidates from 2010 to 2015 revealed that 17% were age 39 or younger, although a district court judge must be at least age 35. More striking was that 85% of all applicants had experience in government service. Almost half (44.7%) had ten or more years of government service. Lawyers with experience in the private sector report that judicial salaries prevent them from applying to be judges. The data also show these lawyers are simply not seeking judicial office. Improving salaries will help address the need to attract a more diverse mix of experience among attorneys seeking to be judges.

### **District Court Judge Pay Should Be At Least \$185,489**

To increase the diversity of judicial candidates and encourage more broadly experienced attorneys to become and remain judges, the Commission in 2021 recommended that the salary of a District Court judge should be a minimum of \$165,000, while supporting the Supreme Court's target setting Justice pay at the federal magistrate level (then \$201,112) to bring the pay of a New Mexico District Court Judge to \$181,504. JCC supports the Supreme Court's goal to set justice pay at the level of federal magistrates in New Mexico. Based on January 2022 federal magistrate salary levels, district court judge pay would be \$185,489 for FY24. That salary would attract more diverse candidates to the district courts including lawyers in mid-career who have experience across the spectrum of civil cases beyond the criminal law experience that dominates among recent candidates.

Raising pay to \$185,489 will make district court judge pay less than the salary of the Bernalillo County Attorney (\$260,630), the Santa Fe County Manager (\$211,938), and equivalent to the salary of the Dona Ana County Manger as it was last reported in 2020 (\$185,000). JCC recommends the necessary salary levels be achieved now, when revenue supports the move and well past when this move is needed. The national average for the salary of a Supreme Court Justice as of July 2022, is \$191,806 and that average is certain to rise during the states' 2023 legislative sessions.

JCC recommends justice pay be set at federal magistrate pay in New Mexico, which as of January 2022, would be \$205,528 for FY24. The total recurring cost, assuming adoption of the JCC's second recommendation addressing state magistrate judge salary and assuming current federal magistrate salaries, would be \$3,670,543. JCC recommends no increase in state magistrate judge salary for FY24.

# FY2023 Salary Recommendation (cont.)

## FY2024 NEW MEXICO JUDICIAL COMPENSATION INCREASE INCLUDING BENEFITS

**Moving Justices to Federal Magistrate Judge pay rate [~~\$180,747.61~~ to **\$205,528**]**

Job Title	FTE	Formula	FY2023 Current Annual Rate	Benefits Cost 25.4% JRA & 24.65% MRA	TOTAL Cost Per Judge/ Justice Position including Benefits	TOTAL Cost for all Judge/ Justice Positions	Annual Rate moving justices to federal district court judge pay - Increase FY2023	Benefits Cost 25.4% JRA & 24.65% MRA	TOTAL Cost Per Judge/ Justice Position Including Benefits	TOTAL Cost for all Judge / Justice positions
Chief Justice	1	AJ + \$2000	\$182,747.61	\$46,417.89	\$229,165.50	\$229,165.50	\$207,528.00	\$52,712.11	\$260,240.11	\$260,240.11
Associate Justice (AJ)	4	Target Pay	\$180,747.61	\$45,909.89	\$226,657.50	\$906,630.01	\$205,528.00	\$52,204.11	\$257,732.11	\$1,030,928.45
Chief Court of Appeals	1	95% of Chief Justice	\$173,610.23	\$44,097.00	\$217,707.23	\$217,707.23	\$197,151.60	\$50,076.51	\$247,228.11	\$247,228.11
Court of Appeals Judges	9	95% of Associate Judge	\$171,710.23	\$43,614.40	\$215,324.63	\$1,937,921.65	\$195,251.60	\$49,593.91	\$244,845.51	\$2,203,609.56
Chief District Judge	13	95% of Chief Court of Appeals	\$164,929.72	\$41,892.15	\$206,821.87	\$2,688,684.26	\$187,294.02	\$47,572.68	\$234,866.70	\$3,053,267.11
District Judge	89	95% of Chief District Judge	\$163,124.72	\$41,433.68	\$204,558.40	\$18,205,697.28	\$185,489.02	\$47,114.21	\$232,603.23	\$20,701,687.57
Chief Metro Judge	1	95% of Chief District Judge	\$156,683.23	\$39,797.54	\$196,480.77	\$196,480.77	\$177,929.32	\$45,194.05	\$223,123.37	\$223,123.37
Metropolitan Judge	18	95% of District Court Judge	\$154,968.48	\$39,361.99	\$194,330.48	\$3,497,948.58	\$176,214.57	\$44,758.50	\$220,973.07	\$3,977,515.25
	136					\$27,880,235.29				\$31,697,599.52
Presiding Magistrate Judge	5	75% of Chief Metro Judge	\$117,512.42	\$28,966.81	\$146,479.24	\$732,396.18	\$133,446.99	\$32,894.68	\$166,341.67	\$831,708.36
Magistrate Judge	62	95% of District Court Judge	\$116,226.36	\$28,649.80	\$144,876.16	\$8,982,321.90	\$132,160.93	\$32,577.67	\$164,738.60	\$10,213,792.90
	67					\$9,714,718.09				\$11,045,501.26

Cost to move Justices to \$205,528—2024 Federal Magistrate Judge Pay Rate effective the first full pay period in FY2024 or 25 pay periods

\$3,670,542.53

Cost to move Magistrate Judges to \$132,160.93 if statute is not amended

\$1,279,599.21

Formula: Total new cost / 26 pay periods \* 25 pay periods  
 JRA: 25.4% = 2.5% retiree healthcare, 15.25% pera, 7.65% FICA  
 MRA: 24.65% = 2% retiree health care, 15% pera, 7.65% FICA

# State and Local Salary Comparison

Salaries of New Mexico Supreme Court Justices, Court of Appeals judges, and trial judges<sup>4</sup>

University of New Mexico Athletic Coach 4 (Football)	\$400,000
Senior Investment Officer, State Investment Council	\$299,964
University of New Mexico Chief Legal Counsel	\$296,770
ERB Deputy Director of Investments	\$287,675
Bernalillo County Attorney	\$260,630
University of New Mexico School of Law Dean	\$258,000
Albuquerque Metropolitan County Detention Center Chief	\$238,729
U.S. Tenth Circuit Judge	\$236,900
U.S. District Judge, New Mexico	\$223,400
Santa Fe County Manager	\$211,938
U.S. Limited-Jurisdiction Magistrate Judge, New Mexico	\$205,528
Legislative Council Service Director	\$190,694
Dona Ana County Manager	\$185,000
PERA Executive Director Investments/Pensions	\$181,224
<b>New Mexico Supreme Court Justice</b>	<b>\$180,748</b>
Santa Fe City Manager	\$172,500
<b>New Mexico Court of Appeals Judge</b>	<b>\$171,710</b>
Rio Rancho City Manager	\$170,000
State Engineer	\$169,613
<b>New Mexico District Court Judge</b>	<b>\$163,125</b>
New Mexico Spaceport Director	\$163,090
San Juan County District Attorney	\$156,587
Legislative Education Study Committee Director	\$155,999
<b>New Mexico Metropolitan Court Judge</b>	<b>\$154,969</b>
Santa Fe Municipal Judge	\$146,806
Senate Chief Clerk	\$143,961
House Chief Clerk	\$133,517
Attorney General's Office Chief of Staff	\$127,607
State Auditor's Office Deputy State Auditor	\$117,915
<b>New Mexico Magistrate Judge</b>	<b>\$116,227</b>

<sup>4</sup> Data collected from salaries reported on the New Mexico Sunshine Portal, the University of New Mexico Sunshine Portal, sites published by local governments, and information provided by employees of the institution or government office. Information collected as of September 27, 2022.

# AMEND COMPENSATION STATUTE TO REMOVE MAGISTRATE JUDGE SALARIES

As previously discussed, by statute all state court judge salaries are set as a percentage of the salary of a Supreme Court Justice. With the existing statute, increasing justice pay to \$205,528 would raise District Court judge pay to \$185,489, but would also raise state magistrate pay to \$132,161. An increase from the current \$116,227 to \$132,161 for New Mexico state magistrate judges is not recommended. In discussions with legislators about judicial pay, the statutory mandate to increase compensation for state magistrates as a percentage of pay for other state judges is often raised as an impediment to increasing pay for other judges. The reasons for this concern frequently rest on the following:

- Qualifications – Magistrates are the only state judges that are not required to be attorneys. An exception exists in Las Cruces where, due to a separate statute relating to the population of Dona Ana County, the state magistrate judges must be lawyers. Outside of Las Cruces, the qualifications for a state magistrate judge are a high school diploma or its equivalent and residence in the district in which he or she would serve. There are no experience or age requirements. Metropolitan Court judges must have practiced law for at least three years. District Court judges must be at least age 35 and have at least 6 years' experience in the practice of law. At a minimum, appellate judges and Justices must be 35 and have practiced law for at least 10 years.
- Jurisdiction – State Magistrate Court jurisdiction is limited to traffic, criminal misdemeanors, and civil cases with an amount in controversy up to \$10,000. District Court judges have jurisdiction over all criminal and civil cases, family and juvenile cases, and writs. Metropolitan Court has jurisdiction over misdemeanor crimes and civil cases up to \$10,000 as do magistrate courts. Appellate judges and justices have jurisdiction over all cases.
- Record – There is no written or taped record of State Magistrate Court proceedings. The exception is for preliminary hearings to determine probable cause, which are recorded. Appeals from State Magistrate Court cases are de novo, meaning the appeal starts the case anew in District Court, with no record of or impact from what occurred in the case in the State Magistrate Court. Metropolitan Court also has de novo appeals to District Court, except in driving while intoxicated and domestic relation cases, which are recorded and are appealed on the record to the Court of Appeals.
- Recruitment and Election – Vacancies in State Magistrate Courts routinely have applicants that provide the Governor with qualified candidates for appointment. Applicants are not vetted by the Judicial Nominating Commission that all other judicial applicants must convince to submit their name to the Governor as recommended for selection. Article VI, Sections 35, 36, and 37. As JCC reports have repeatedly documented, Judicial Nominating Commissions have experienced increasing difficulty identifying qualified applicants for non-Magistrate vacancies. In District Courts and when there is a vacancy on the Court of Appeals or Supreme Court, the Nominating Commission has often been told that a prospective candidate will not apply due to the salary. State magistrate judges run for direct election every four years that require a majority vote. Other state judges must run in one contested race and win by majority vote, after which they face a retention election in which they must achieve 57% of the votes cast. Before running for retention, non-Magistrate judges are evaluated by the Judicial Performance Evaluation Commission (JPEC) which publishes recommendations to retain or not retain. The recommendations result from evaluations received from a range of public and private individuals as well as court observers. State magistrates are not evaluated by JPEC. State magistrates run in only one county. All other judges outside Albuquerque and Las Cruces run in multi-county districts.
- Administration - State magistrate judges do not manage magistrate court personnel nor do they administer the court's budget. These responsibilities were transferred a few years ago from the AOC to District Courts. The District's Chief Judge is the administrative authority responsible for personnel and budgets in the District and State Magistrate Courts. The Bernalillo County Metropolitan Court Chief Judge is also responsible for that court's budget and administration.



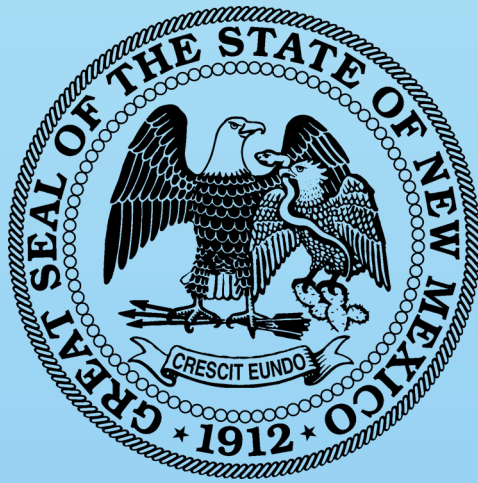
## **Amend Compensation Statute to Remove State Magistrate Judge Salaries (CONT.)**

Cost is also a factor in the JCC recommendation. If the target pay recommended for non-magistrate judges is achieved, the current statute would increase state magistrate pay by \$15,935 annually, increasing the cost of judicial pay increases by well over \$1 million, an additional 28.6% increase in the cost.

Removing state magistrate judges from the statute would not reduce state magistrate pay or prevent future increases in pay. State magistrate judges are the only state judges with constitutional protection from a reduction in salary during the judge's term. N.M. Const., Article VI, Section 26. A survey of salaries for non-lawyer, limited jurisdiction judges in other states does not indicate that New Mexico State Magistrate Judge pay is below the pay in states with comparable requirements for the position.

- Current State Magistrate Compensation is Adequate — Prior to the 2022 legislative session, in meetings with the Supreme Court and conversations with representatives from the District and Metro Judges Association (DMJA) and the Magistrate Judges Association (MJA), representatives of the DMJA and MJA agreed that the then-existing compensation (\$98,637) was sufficient and appropriate. Nonetheless, as a result of the 2022 legislative session, state magistrate pay increased by \$17,590 (17%) to \$116,227 for FY23.
- New Mexico Magistrate Pay Compares Favorably with Pay in Comparable States – Comparisons with salaries in other states are very challenging because no two states have the same provisions for limited-jurisdiction judges. In most states, limited-jurisdiction judges are required to be lawyers. Limited-jurisdiction judges in those states tend to have higher pay as well as higher criminal jurisdiction (including lower level felonies) and higher civil case amount limits (\$50,000 to \$100,000 is typical). However, a survey of states with limited-jurisdiction courts identified a few states that provide reasonable comparisons.
  - ◊ New Mexico - Non-lawyer state magistrate judges have jurisdiction over misdemeanors and civil cases up to \$10,000. As with most of the other limited-jurisdiction judges listed here, state magistrate judges also make probable cause findings in felony cases. Salary is \$116,227.
  - ◊ Pennsylvania – Non-lawyer judges have jurisdiction over misdemeanors and civil cases up to \$12,000. Salary is \$93,338.
  - ◊ Utah – Non-lawyer judges except in the most populous counties have jurisdiction over misdemeanors and civil cases up to \$11,000. Salary is \$87,500.
  - ◊ Nevada – Non-lawyer judges in counties with a population of less than 100,000 have jurisdiction over misdemeanors and civil cases up to \$15,000. Salary is \$40,000 to \$75,000 (some are not full-time).
  - ◊ Delaware – Non-lawyer Justice of the Peace judges have jurisdiction over misdemeanors and civil cases up to \$25,000. Salaries are \$78,783 to \$83,952.
  - ◊ Arizona – Non-lawyer Justice of the Peace judges have jurisdiction over misdemeanors and civil cases up to \$10,000. Salaries are \$37,318 to \$104,568 (not all are full-time; salary is set by municipality).

In summary, the differences in qualifications, jurisdiction, State Magistrate Courts not being courts of record, the difficulty in recruiting non-Magistrate judges that do not occur with state magistrate judge vacancies, and the additional management responsibilities of judges in Metropolitan and District Courts, present significant difference in the compensation needed to attract and retain state magistrate and non-magistrate judges. Mandating the same pay increases for state magistrates as for non-magistrate judges creates barriers to increasing District Court judge pay to \$185,489 under the current statute. For all of these reason, the JCC recommends amending the statute to remove state magistrate judges from NMSA 1978, Section 34-1-9D(4) (2017).



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