

**State of New Mexico**

**Judicial Compensation Commission**

**2021 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 (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. 2021 JCC members are:

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

**Deborah Seligman**, appointed by the President Pro Tempore of the New Mexico Senate;

**Kathleen “Kay” Marr**, appointed by the Speaker of the New Mexico House of Representatives;

**Carla Martinez**, 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.

The position reserved for an appointee by the Governor of New Mexico is vacant.

## 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 2022 session to accomplish the recommendations of the Legislature’s JCC.

## **Update on the 2021 Legislative Sessions**

During the 2021 regular legislative session, the Legislature considered the JCC's recommendations and enacted an increase of 3.5% for all state judges. This brought District Court Judge pay to \$138,438, which remains \$27,000 below the JCC's previously established target of \$165,000. In addition, HJR12 and SJR4 were introduced. Both would have put a constitutional amendment on the November 2022 ballot to have an independent commission establish salaries for elected officials, including state judges. Both HJR12 and SJR4 reached the Senate Judiciary Committee but could not be moved to the full Senate before the session adjourned.

## **Summary of FY 2023 Recommendations**

- Increase judicial pay to achieve the goal of paying District Court Judges at least \$165,000 by raising Justice pay to at least \$182,846 and following the salary progression provided in NMSA 1978 § 34-1-9. The JCC recognizes that the New Mexico Supreme Court has requested in its Unified Budget that Justice pay be set at the same level as a limited-jurisdiction federal Magistrate Judge, or \$201,112. That would bring the pay of a New Mexico District Court Judge to \$181,500. The JCC generally would support the Supreme Court's request to go beyond the minimum targets described in this report, in an effort to improve the Judiciary's ability to recruit and retain high quality judges with diverse practice backgrounds. The JCC believes that its longstanding goal to bring District Court Judge pay to \$165,000 should be the minimum target.
- Amend the judicial compensation statute, NMSA 1978 § 34-1-9, to remove Magistrate Judge compensation from the statute; NO salary increase for Magistrate Judges is recommended for FY2023.
- Support a constitutional amendment to give the JCC or another independent commission the authority to set judicial salaries. The Commission should have one or more members appointed by the Chief Justice.

# FY2023 Salary Recommendation

## **Increase salaries to make District Court Judge pay to at least \$165,000**

The JCC recommends that the salary of Supreme Court Justices be increased to at least \$182,846. The effect would be to increase the salary of District Court Judges to at least \$165,018 due to the statutorily mandated salary regression steps in NMSA 1978, § 34-1-9. The salary of New Mexico Supreme Court Justices as of July 2021 (\$153,394) ranks 48 out of 55 in the United States based on salaries in other states and territories as of July 2019.<sup>1</sup> In addition to low pay in comparison to Justices and Judges in other states, Judges are paid less than lawyers in New Mexico with comparable experience as well as local and state management level employees. The low pay has significantly reduced the Judiciary's ability to attract and retain judges, especially those with proficiency in civil law.

The 3.5% increase effective in July 2021 left New Mexico District Court Judges with a salary ranked 48 of 55 and Judges of the Court of Appeals ranked 40 of 42. 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 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 is the integrity and judgment of those men and women that allow our constitutional democracy to move forward.<sup>2</sup>

In 2017, the New Mexico State Bar Association commissioned a lawyer compensation study, as it did in 2012. Survey respondents who identified themselves as a partner/shareholder reported an average salary of \$210,502, with sole practitioners reporting \$184,457<sup>3</sup>. 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 salary 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 at least \$165,018 in FY23, the pay still would be significantly less than the reported 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 thus building a Judiciary with more diverse legal experience.

Using salaries reported in the Bar's 2017 survey with current judicial salaries, the average partner in a law firm is paid 27% more than a Justice of the Supreme Court. The average solo practitioner is paid 17% more than a Supreme Court Justice. The average pay of all 569 lawyers in the 2017 survey, from partners in law firms to legal aid and government attorneys, was \$142,382, putting the current salary for a District Court Judge 3% below the average pay of all attorneys in all fields of law practice in New Mexico as reported four years ago. It therefore appears that, rather than making progress in achieving competitive judicial salaries, New Mexico is falling further behind.

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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, 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/0017/60164/JSS-Jan-2021-003.pdf](https://www.ncsc.org/_data/assets/pdf_file/0017/60164/JSS-Jan-2021-003.pdf)

<sup>2</sup> Yvette McGee Brown, former Ohio Supreme Court Justice, Forward to [Building a Diverse Bench: A Guide for Judicial Nominating Commissioners](#), Brennan Center for Justice, 2016.

<sup>3</sup> The Economics of Law Practice in New Mexico, *Lawyer Compensation*, May 2017, Research & Polling, Inc.

# FY2023 Salary Recommendation

(continued)

The experience of Judicial Nominating Commissions during 2020-21 is consistent with 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 sufficiently will help address the need to attract a more diverse mix of experience among attorneys seeking to be judges.

To increase the diversity of judicial candidates and encourage more broadly experienced attorneys to become and remain judges, the Commission recommends that the salary of a District Court Judge should be at least \$165,000. The JCC identified and supported this salary target for District Court Judges in its reports in 2019 and 2020. That salary should 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 at least \$165,000 will make District Court Judge pay higher than the salary reported by the average of all attorneys (\$142,382) in 2017 and closer to what they might earn in private practice. The target salary still would be less than the current salary of executives paid by the government to manage agencies and local governments (see State and Local Salary Comparisons, page 10 below).

The JCC recommends the desired salary level be achieved during the FY 2023 legislative session in 2022, when revenue projections show state resources are sufficient. The target pay has been supported by the JCC for several years. To achieve this target for District Court Judges, the pay of a Justice would be \$182,846 under the statutory salary progression. Adopting the recommendation would make Justice pay in New Mexico rank 28 in the nation out of 55, just behind Missouri and ahead of Georgia if all states' salaries do not increase by July 2022 (they are likely to be increased). The proposed increase would make New Mexico Court of Appeals Judges' salaries rank 24 out of 42, just behind Florida and ahead of Missouri. New Mexico District Court Judges' salaries would rank 27 out of 55, just behind Minnesota and ahead of New Hampshire.

The JCC recognizes that the New Mexico Supreme Court has requested in its Unified Budget that Justice pay be set at the same level as a limited-jurisdiction federal Magistrate Judge, or \$201,112. That would bring the pay of a New Mexico District Court Judge to \$181,500. This report recommends that the JCC's longstanding goal to bring District Court Judge pay to \$165,000 be considered as a minimum level. Therefore, the JCC would support the Supreme Court's request to go beyond that minimum target in an effort to further improve the Judiciary's ability to recruit and retain high quality judges with diverse practice backgrounds.

The JCC recommends Justice pay be set to at least \$182,846 in FY2023, *moving District Court Judge pay to at least \$165,019*. The total recurring cost, assuming adoption of the JCC's second recommendation addressing Magistrate pay, would be \$4,257,818. The JCC recommends not increasing Magistrate Judge salaries for FY23.

# FY2023 Salary Recommendation

(continued)

## FY2023 New Mexico Judicial Compensation Increase including Benefits

### District Court Judge Pay \$165,000 in FY2023

Job Title	FTE	Formula	FY2022 Current Annual Rate (after 3.5% increase)	Benefits Cost 25.15% JRA	TOTAL Cost Per Judge/ Justice Position incl Benefits	TOTAL Cost for all Judge / Justice positions	Annual Rate - reflecting 19.2% Increase FY2022	Benefits Cost 25.15% JRA & 24.65% MRA	TOTAL Cost Per Judge/ Justice Position incl Benefits	TOTAL Cost for all Judge / Justice positions
Chief Justice	1	AJ + \$2000	\$155,394.33	\$39,081.67	\$194,476.00	\$194,476.00	\$184,846.04	\$46,488.78	\$231,334.82	\$231,334.82
Associate Justice (AJ)	4	Target Pay	\$153,394.33	\$38,578.67	\$191,973.00	\$767,892.02	\$182,846.04	\$45,985.78	\$228,831.82	\$915,327.28
Chief Court of Appeals	1	95% of Chief Justice	\$147,624.61	\$37,127.59	\$184,752.20	\$184,752.20	\$175,603.74	\$44,164.34	\$219,768.08	\$219,768.08
Court of Appeals Judges	9	95% of Associate Justice	\$145,724.61	\$36,649.74	\$182,374.35	\$1,641,369.18	\$173,703.74	\$43,686.49	\$217,390.23	\$1,956,512.05
Chief District Judge	13	95% of Chief Court of Appeals Judge	\$140,243.38	\$35,271.21	\$175,514.59	\$2,281,689.72	\$166,823.55	\$41,956.12	\$208,779.67	\$2,714,135.76
District Judge	86	95% of Court of Appeals Judge	\$138,438.38	\$34,817.25	\$173,255.64	\$14,899,984.71	\$165,018.55	\$41,502.17	\$206,520.72	\$17,760,781.64
Chief Metro Judge	1	95% of Chief District Judge	\$133,231.21	\$33,507.65	\$166,738.86	\$166,738.86	\$158,482.37	\$39,858.32	\$198,340.69	\$198,340.69
Metropolitan Judge	18	95% of District Court Judge	\$131,516.46	\$33,076.39	\$164,592.85	\$2,962,671.38	\$156,767.62	\$39,427.06	\$196,194.68	\$3,531,504.26
<b>133</b>			<b>\$23,099,574.07</b>				<b>\$27,527,704.57</b>			

**Increase Costs**

**\$4,257,817.79**

Not including Presiding Magistrate and Magistrate Judges

Formula: Total new cost / 26 pay periods  
\* 25 pay periods

JRA: 25.4% = 2.5% retiree healthcare,  
15.25% pera, 7.65% FICA

The traditional way for the Legislature to set salaries for judges is to appropriate an increase in HB2 and state the percentage increase that appropriation provides. For example, Section 8A(3) of HB 2 in the 2020 regular session provides, “one million one hundred seventy-nine thousand three hundred dollars (\$1,179,300), in combination with appropriations in Subsection B of Section 4 of this Act, to provide judges and magistrates a salary increase of seven percent” (that increase was later reduced to \$0 during the special session due to the impact of the pandemic on state resources). To achieve the JCC’s recommended minimum target of District Court pay at \$165,000, which requires Justice pay be set to at least \$182,846, requires appropriations of \$4,257,818 if Magistrate Judges are excluded.

As noted above, the JCC recognizes that the New Mexico Supreme Court is seeking to link the pay of New Mexico judges to the pay of federal Magistrate Judges, which is 92% of a federal District Court Judge, or \$201,112. The minimum recommendation of the JCC would bring Justice pay to \$184,846 and District Court Judge pay to \$165,019. The numerous concerns that support the JCC recommendation also support the target sought in the Unified Budget which, although it is above the minimum target recommended by the JCC, is amply justified.

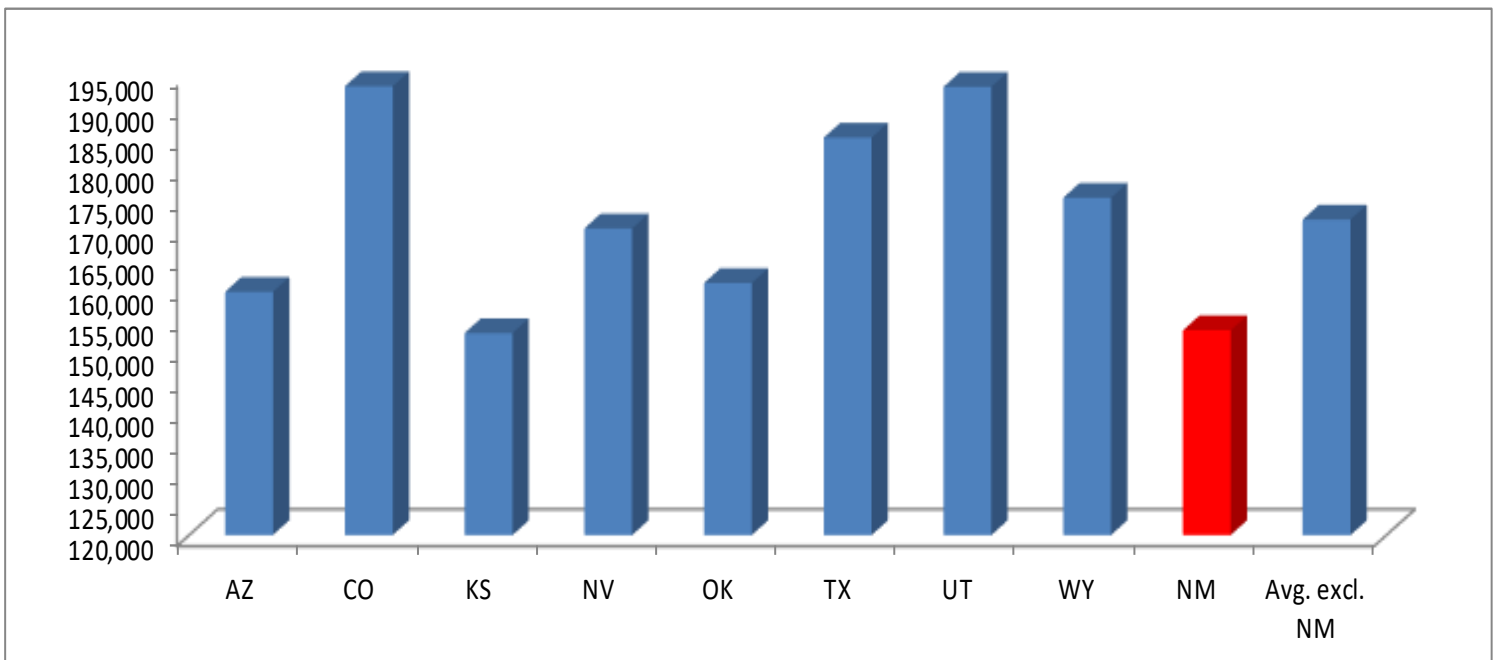
# National Salary Comparison 2021

## Supreme Court Justice Salaries as of July 1, 2019 in Western Comparison States<sup>4</sup>

AZ	\$159,685
CO	\$188,151
KS	\$145,641
NV	\$170,000
OK	\$161,112
TX	\$184,800
UT	\$187,500
WY	\$175,000
NM	\$148,208

The average Justice salary in these mountain west states excluding New Mexico is \$173,725, or about \$10,000 less than the national average of \$183,939. The New Mexico Justice salary is \$20,331 below the Mountain West average and \$30,545 below the national average. The cost-of-living index reported in the NCSC salary tracker for New Mexico is 100.3% (about the national average). Five Mountain West states have a higher cost-of-living index than New Mexico and three have a lower cost-of-living index than New Mexico.<sup>5</sup>

New Mexico Justice salaries continue to lag well behind neighboring states in the Mountain West region. States used in the comparison chart report below were selected because they are the designated “Mountain West Region” states by the Hay Group. The Hay Group is a consulting firm whose salary compilation data is used by the Judiciary and many state and private entities, regarding comparative salary data. The Mountain West Region is used by the Judiciary because of the states’ similarities in population concentrations and economics.



<sup>4,5</sup> NCSC Annual Survey of Judicial Salaries, July 1, 2021.



# State and Local Salary Comparison

The salaries of New Mexico Supreme Court Justices, Court of Appeals judges, and trial judges (highlighted in yellow) compared to salaries paid in local and state government, as well as in higher education.<sup>6</sup>

Senior Investment Officer, State Investment Council	\$275,887
University of New Mexico Chief Legal Counsel	\$272,950
ERB Deputy Director of Investments	\$264,585
Bernalillo County Attorney	\$263,674
University of New Mexico School of Law Dean	\$253,417
Albuquerque Metropolitan County Detention Center Chief	\$233,099
U.S. Tenth Circuit Judge	\$231,800
University of New Mexico Offensive Coordinator (Football)	\$225,000
U.S. District Judge, New Mexico	\$218,600
U.S. Limited-Jurisdiction Magistrate Judge, New Mexico	\$201,112
Santa Fe County Manager	\$198,750
Dona Ana County Manager	\$185,000
PERA Executive Director Investments/Pensions	\$172,942
Santa Fe City Manager	\$170,000
Legislative Council Service Director	\$163,063
New Mexico Spaceport Director	\$159,000
State Engineer	\$156,000
<b>New Mexico Supreme Court Chief Justice</b>	<b>\$155,394</b>
<b>New Mexico Supreme Court Justice</b>	<b>\$153,394</b>
Annual salary of all NM attorneys in 2017 State Bar Salary Survey	\$142,382
<b>New Mexico District Court Judge</b>	<b>\$138,438</b>
Rio Rancho City Manager	\$137,000
San Juan County District Attorney	\$135,339
Senate Chief Clerk	\$132,406
<b>New Mexico Metropolitan Court Judge</b>	<b>\$131,516</b>
Legislative Education Study Committee Director	\$129,168
State Auditor's Office Deputy State Auditor	\$128,699
Attorney General's Office Chief of Staff	\$127,607
House Chief Clerk	\$121,992
Santa Fe Municipal Judge	\$120,390
<b>New Mexico Magistrate Judge</b>	<b>\$ 98,637</b>

<sup>6</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 August 30, 2021.



## **AMEND COMPENSATION STATUTE TO REMOVE MAGISTRATE JUDGE SALARIES**

By statute, all state court judge salaries are set as a percentage of the salary of a Supreme Court Justice. Starting with Justice pay, a Judge of the Court of Appeals is paid 95% of the Justice salary, a District Court Judge is paid 95% of a Judge of the Court of Appeals, a Judge in the Bernalillo County Metropolitan Court is paid 95% of a District Court Judge's pay, and a Magistrate is paid 75% of the pay of a Metropolitan Court Judge. NMSA 1978, Section 34-1-9 (2017). Justice pay for FY 2022 is \$153,394, District Court Judge pay is \$138,438, and Magistrate pay is \$98,637. Since the 2019 JCC Report, the salary target established by the JCC had been to increase pay so that District Court Judges are paid \$165,000. This pay target was intended to address longstanding challenges in recruitment and retention of non-Magistrate judicial candidates. With the existing statute, increasing Justice pay to \$182,846 in order to raise District Court Judge pay to \$165,019 would raise magistrate pay to \$117,575.

In discussions with legislators about judicial pay, the statutory mandate to increase compensation for Magistrates as a percentage of pay for other state judges is often raised as an impediment to increasing pay for other judges. The stated reasons for this concern include 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 Magistrate Judges must be lawyers. Outside of Las Cruces, the qualifications for a Magistrate Judge are a high school diploma or its equivalent and residence in the district in which he or she would serve as a Magistrate Judge. 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—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 recording of Magistrate Court proceedings except for preliminary hearings to determine probable cause. Appeals from 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 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 Magistrate Courts routinely have qualified applicants among whom the governor makes appointments. Magistrate applicants are not vetted by the Judicial Nominating Commission. A vacancy in all other state judge positions requires applicants who meet the minimum qualifications to apply to a Judicial Nominating Commission chaired by the Dean of the UNM Law School. Those recommended by the Commission are sent to the Governor for possible appointment. N.M. Const., Article VI, Sections 35, 36, and 37. JCC reports have repeatedly documented that Judicial Nominating Commissions have experienced increasing difficulty identifying qualified applicants with diverse practice backgrounds for non-Magistrate vacancies. In District Courts, the Court of Appeals and the Supreme Court, Commissions have often been told by a prospective candidate that he or she will not apply due to the salary. New Mexico Judges have also left state court for federal judicial appointments where salaries are much higher. 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, then 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. Magistrates are not evaluated by the JPEC. Magistrates run in only one county. All other judges outside Albuquerque and Las Cruces run in multi-county districts.

## **Amend Compensation Statute to Remove Magistrate Judge Salaries**

*(continued)*

- Administration—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 Administrative Office of the Courts to District Courts. The District’s Chief Judge is the Administrative Authority responsible for personnel and budgets in the District and Magistrate Courts. The Bernalillo County Metropolitan Court Chief Judge is also responsible for that court’s budget and administration.
- Current Magistrate Compensation is Adequate—Current Magistrate Compensation is Adequate—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 current compensation (\$98,637) is sufficient and appropriate. They agreed that increased pay in FY2023 is not needed in the 2022 legislative session.
- 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) as well as 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 magistrate judges have jurisdiction over misdemeanors and civil cases up to \$10,000. As with most of the other limited-jurisdiction judges listed here, magistrate judges also make probable cause findings in felony cases. Salary is \$98,637.
  - ◇ 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).

Cost is also a factor in the JCC recommendation. To achieve the minimum target of District Court Judge pay at \$165,000 under the current statute would require recurring appropriations of \$5,790,188. By contrast, if the statute did not mandate an increase in Magistrate pay, the cost would be \$4,257,818. The difference of \$1,523,370 is a reduction of 26.5% in the cost of achieving the \$165,000 District Court Judge minimum pay target.

Removing Magistrate Judges from the statute would not reduce Magistrate pay or prevent future increases in pay. Magistrate Judges enjoy constitutional protection from a reduction in salary during the judge’s term. N.M. Const., Article VI, Section 26. Adopting the JCC recommendation to remove magistrates from the salary structure in NMSA 1978, § 34-1-9D(4) (2017) does not threaten any adverse impact on magistrate salaries while it is very likely to

## **SUPPORT A CONSTITUTIONAL AMENDMENT TO HAVE AN INDEPENDENT COMMISSION SET JUDICIAL SALARIES**

The JCC emphasizes that it is critical to improve judicial salaries now to address chronic challenges in recruitment and retention of judges. Nothing in the following discussion of a constitutional amendment to empower a commission to set judicial salaries diminishes the need to increase judicial salaries immediately as recommended in this report. If a salary commission is created by constitutional amendment, the commission would begin its analysis of judicial salaries from the improved vantage point created by increasing salaries in the 2022 legislative session as this report recommends.

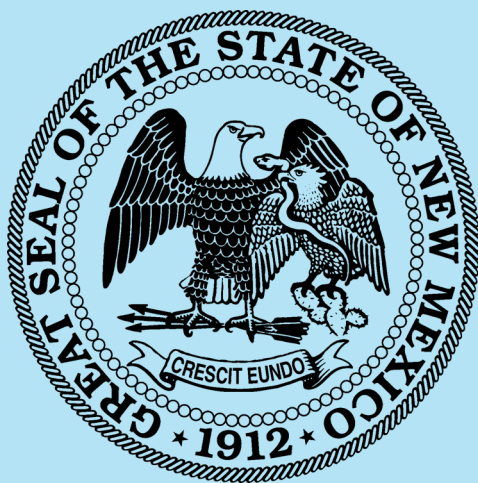
A survey by the National Center for State Courts found that 25 states utilize judicial compensation commissions and 25 states use other methods to set judicial compensation, most notably, legislative action driven by statute. Examples of the impact of a salary commission with binding authority to set judicial salaries can be found, for example, in Arkansas, Washington, and New York. Before creation of a salary commission authorized to make binding recommendations, judicial salaries in these states failed to keep up with their competitive markets. After creation of a commission with binding authority to set judicial salaries, the salaries of judges reached and maintained competitive levels designed to overcome the types of recruitment and retention challenges now faced by New Mexico. The JCC finds the data demonstrate the value of an independent commission to set judicial salaries. The JCC supports a constitutional amendment to provide that an independent commission will set judicial salaries.

The current New Mexico statute makes the JCC's recommendations advisory only. Either this requires a stand-alone bill for judicial pay or that the Supreme Court prioritize the JCC's recommendations over other needs of the courts in the Unified Budget the Court approves for submission in September each year. The JCC has in the past recommended a constitutional change (JCC Reports 2015, 2017) to address this issue. These reports emphasize that making the JCC recommendations binding would reduce judicial lobbying for pay increases in competition with other critical needs of the courts and also avoid litigation such as occurred in 2014 over veto or partial veto of appropriations for judicial salaries.

During the 2021 legislative session, proposed constitutional amendments would have required a salary commission or the State Ethics Commission, beginning in 2024, to set salaries for state elected officials, including judges. Currently NMSA 1978, § 34-1-10, requires the JCC to recommend judicial salaries in a report issued by December 1 each year. As noted above, in the past the JCC has recommended that its salary recommendations be binding. A constitutional amendment similar to SJR4 or HJR12 would accomplish this. The JCC could become that independent salary commission, or a model similar to that proposed in HJR12 or SJR4 could be adopted. The JCC recommends the Legislature place before the voters in November 2022 a constitutional amendment to have an independent commission, which could be the JCC or another body, set judicial salaries.

### **SJR4 and HJR12**

Introduced in the 2021 legislative session, SJR4 would have asked voters to approve in the 2022 general election an amendment to require the Ethics Commission to "establish the salaries of all elected state officers effective for the first full pay period in July 2024 and every two years thereafter." The Ethics Commission would be required to announce the new salaries by December 1 of the preceding year. HJR12, also introduced during the 2021 legislative session, proposed creation of a Public Officer Salary Commission. While HJR12 originally had different mechanisms than SJR4 for setting judicial salaries, after HJR12 passed the House, the Senate Judiciary Committee amended it to reflect the proposals in SJR4 to have the State Ethics Commission set salaries. The JCC supports a House or Senate Joint Resolution in the 2022 session to give voters the opportunity in the November 2022 election to adopt a constitutional amendment to establish that the Ethics Commission or other independent salary commission set salaries for judges. If there is an independent salary commission or a requirement that judicial salaries be set by the State Ethics Commission, the constitutional amendment should provide for the Chief Justice to appoint one or more representatives of the Judiciary to the commission.



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