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Monday, May 07, 2007

**Judicial salaries scandalously low**

*It's time for a raise; our judges, who decide life-or-death issues, are paid less than many first-year lawyers*

By Cary Ichter, Special To The Daily Report

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THE TIMING WAS exquisitely ironic: At virtually the same time the Daily Report announced that the Georgia Legislature, for another year, would fail to approve legislation raising pay for members of the judiciary ("Signs Point Away from Judicial Raises This Year," April 10), it was also reporting on the "lavish" pay raises being enjoyed by first-year associates at Atlanta's largest law firms ("Stressing the Machine," April 23).

When the end of 2007 arrives, first-year associates at the Atlanta offices of Hunton & Williams and McGuireWoods will be paid \$145,000 per year, and the mean compensation paid to Superior Court judges in the state of Georgia will be \$133,000. If that is not bad enough, consider this: On an annualized basis, the summer associates at the largest Atlanta firms also will earn more than most Georgia Superior Court judges.

While the argument can certainly be made that first-year associates at these firms are being paid too much, the more obvious and painful observation is that judges, at all levels in the state of Georgia, are scandalously underpaid.

Currently, Superior Court judges in

Georgia are paid \$113,470 by the state, and most are paid some supplemental amount by the counties in which they sit. Judges on the Court of Appeals are paid \$157,000, while Georgia Supreme Court justices are paid \$158,000. Appellate court judges get no supplements. Because appellate judges generally sit in Atlanta and, unlike the Legislature, are not paid travel allowances, appellate court judges who live outside the metropolitan Atlanta area are effectively paid less than many Superior Court judges are paid.

On Aug. 10, 2006, the Commission on Judicial Services of the State Bar of Georgia issued its Final Report and Recommendations regarding judicial compensation in Georgia. The report compared the pay of lawyers with five to eight years of experience earning at the 75th percentile of compensation with the pay of Superior Court judges. The report, which was issued prior to the most recent round of double-digit raises, found that Superior Court judges in the Atlanta area were being paid 31 percent less than the comparator group. With the most recent changes in compensation, that number is likely over 40 percent today.

In other words, the judges presiding over capital murder cases, other violent felony cases, child-custody matters, multimillion-dollar business disputes, and issues involving the legality and constitutionality of our laws would, from a financial perspective, be better off quitting and becoming first-year associates at a large Atlanta law firm.

The only rational conclusion about the system by which judicial compensation is set is that the system is broken—badly broken.

No ordinary job

It is true that public service is a noble calling and that being a judge carries with it considerable prestige. On the other hand, judges ought not to be required or expected to sacrifice the financial security of themselves and their families to serve, and the bench ought not to be a club reserved only for those with sufficient fortunes that they can afford to endure the pay cut.

It is also true that most Georgians do not make the median \$133,000 that Superior Court judges make. But then, most Georgians also do not go to school for 19 years, operate in a market that pays its newbies \$145,000, or preside over life-and-death issues every day. Frankly, I do not want an average Georgian presiding over my cases, and I don't want the people of extraordinary talent and wisdom I expect to be doing that job paid like ordinary Georgians.

To remedy the situation, Rep. Wendell Willard, R-Sandy Springs, and certain of his colleagues submitted a bill that would have awarded a respectable raise to the members of the judicial branch. That bill passed the House and is now languishing in the Senate Appropriation Committee, where it will die at the end of this session. One of the reasons for the unfortunate demise of this much-needed measure was Gov. Sonny Perdue's declaration that judicial raises should await a comprehensive review of court compensation issues. While the governor has expressed bona fide concerns regarding the manner in which judicial pensions are awarded, it is unclear why we should delay for another year the positive change that resolving this issue would represent.

The U.S. Supreme Court in *McCulloch v. Maryland* declared that "the power to tax involves the power to destroy." The power to financially suffocate is every bit as efficient an agent of destruction. When the judiciary's just pleas for reasonable compensation can be so injudiciously ignored by the legislative and executive branches, who can seriously argue that there are three co-equal branches of government? The judiciary may have the power to strike down laws, but the Legislature and the executive have the power to financially eviscerate the judiciary.

To remedy this situation, the following steps ought to be taken by the Legislature in its next session:

- (1) Judicial salaries ought to be raised by no less than 40 percent as soon as possible;
- (2) To fund higher compensation, a user fee ought to be imposed on those who use the courts, but the fee ought not to be a barrier to access. Instead, the courts ought to collect 1 percent or 2 percent of every dollar that changes

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hands in connection with any civil proceeding at the end of the case. If no money changes hands, no money is collected.

The failure of the required payor to make such payments should be at the payor's peril—operating much like an attorneys' fees lien against a judgment. A small percentage of any restitution payments in criminal matters ought to go into such a fund. This would be a user fee, not a tax, and in spite of the fee, the civil justice system would still be a tremendous bargain when compared with the cost of arbitration.

(3) The state should create a compensation commission to make decisions regarding judicial compensation that will be binding unless specifically rejected by the Legislature. Members of the commission should be appointed by the governor, the Legislature and the state bar.

Georgia actually has a commission that is charged with responsibility for making nonbinding recommendations to the General Assembly for setting the salaries of judges and other constitutional officers. The state bar report noted, however, that "the compensation commission has become moribund" for many years.

Whatever form a solution may take, this is a critical issue that must be addressed promptly. A commitment to judicial independence, a commitment to the separation of powers, and a commitment to the justice that the justice system is supposed to deliver demands that the General Assembly and the governor give this issue thoughtful and meaningful attention.

CARY ICHTER is a partner in Thompson Hine's business litigation practice group. A trial lawyer with a wide-ranging commercial practice, he has tried more than 60 cases to verdict or award. His clients include national franchise companies, international software developers and licensors, international manufacturers of industrial products and professional service providers typically in disputes. He can be reached at [cary.ichter@thompsonhine.com](mailto:cary.ichter@thompsonhine.com).

*Special To The Daily Report Cary Ichter*

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