

**Chief Justice Robert A. Mulligan
Compensation Advisory Board Hearing
January 30, 2008**

Co-Chair Costa, Co-Chair Guzzi, Ms. Wilmot, Dean Crosby and Professor Kochan

Thank you for the opportunity to share information on the work of the Massachusetts judiciary, as you consider the issue of judicial salaries. I appreciate your efforts to address the sensitive issue of public sector compensation.

First, I would like to provide a brief overview of court operations and judicial responsibilities, before I address judicial compensation.

Massachusetts Courts

The Massachusetts Court system consists of two appellate courts, the Supreme Judicial Court and the Appeals Court, and seven Trial Court departments: Boston Municipal Court, District Court, Housing Court, Juvenile Court, Land Court, Probate & Family Court and Superior Court.

I would like to take the opportunity to introduce the departmental chief justices who are here tonight.

The Commonwealth has made an historic, enduring commitment to provide access to quality justice for all citizens, which today is evidenced by the 106 courthouses in communities throughout the state where justice is delivered by 379 Trial Court judges¹.

In FY07 our statewide caseload was almost 1.3 million. I have included a breakdown by Trial Court department of the divisions, judges and caseload for Fiscal Year 2007 with my written testimony.

Judicial Responsibility

Each Trial Court department presents unique issues in terms of the variety, complexity and volume of cases handled. Therefore, each department requires women and men with different experiences and qualifications. However, judges in all departments make decisions that have life altering implications for the parties involved on both the criminal and civil sides.

From murder cases to child custody decisions, complex business cases to mental health commitments the issues confronting judges require discerning intellect, knowledge of the law, life experience and a basic understanding of issues faced by citizens from every socio-economic class. Judges also must have the patience and communications skills to handle employees, lawyers, parties, witnesses, jurors and members of the public.

¹ This number represents the total number of authorized judicial positions within the seven trial court departments.

In recent years, there has been an explosion in the volume of self-represented litigants bringing matters before the court, as well as in the number of non-English speaking litigants who require the use of court interpreters. Last year, Trial Court matters required interpreters in more than 70 different languages. In the Probate and Family Court and in the Housing Court pro se litigants can account for up to 70 percent of the caseload. This phenomenon creates additional challenges for the judge and courtroom staff.

District Court judges need keen insight to assess those defendants who are remediable through probation conditions and those who require temporary separation from society by incarceration. I cannot overemphasize the energy and stamina required to handle the sheer volume of cases in the 62 district courts across the state.

Superior Court cases range from multiple defendant murders to technical business litigation with major financial ramifications. These judges must have the knowledge and competence equal to the high-powered attorneys they face.

Probate and Family Court judges must resolve heart-wrenching family conflicts on issues such as custody and guardianship. This position requires sensitivity and compassion to deal with families in their most emotionally-fragile condition.

The Land Court presently is inundated with foreclosures that inflict emotional and financial upheaval due to poor lending practices. These judges also must possess a deep understanding of the intricacies of property and real estate law.

On Thursdays, the Housing Court oversees evictions involving thousands of tenants – many of whom do not speak English. These judges require patience and understanding to balance a landlord's right to compensation with a family's need for shelter in an emotionally-charged situation.

The Boston Municipal Court faces the challenges of an urban environment where gang violence is spiraling and witness intimidation stymies law enforcement.

Juvenile Court judges have a dual responsibility to salvage the lives of our children as they also protect society. Judges must intervene to place crack-addicted newborns in a safe environment and protect young runaways from exploitation and prostitution.

Just yesterday in Holyoke, Juvenile Court Judge Jim Collins handled 131 matters, including an exploited runaway, delinquencies, assault & battery, rape, arson and carjacking. That crushing workload and range of challenging issues is not uncommon across all court departments.

Beyond case oversight responsibilities, judges also must be leaders, team builders and diplomats, given the unique operating structure within each courthouse. The judges, clerk magistrates and probation personnel comprise a three-pronged team of independent entities which must collaborate daily to effectively deliver justice.

Since the issuance of the Monan Report in 2003, major court reforms have focused on improving the timeliness and efficiency of the delivery of justice. Accountability and

transparency have resulted from the introduction of individual judicial calendars, time standards for each type of case, and the ongoing rollout of a new department-wide case management system.

A court user survey piloted in the Boston Municipal Court in 2007 will be expanded statewide in 2008. These many new practices have significantly increased the expectations and pressure on judges and all court employees.

Judges also have substantial after-hours responsibilities. Although public court hours extend from 8:30 a.m. to 4:30 p.m. judges provide emergency intervention through the rotational Judicial Response System every day from 5 p.m. to 6 a.m. and on weekends.

Judges rotate on call responsibility weekly for four major case types: domestic violence restraining orders, medical emergencies, mental health/psychiatric hospitalizations and search warrants.

In FY2007, judges responded to 7,192 calls statewide, an average of 138.3 calls per week. Since the program's inception in 1984, Trial Court judges have responded to 187,138 emergency calls.

Most judges also write decisions before and after hours and on weekends. In some departments the after-hours time spent writing decisions equals or exceeds the hours spent on the bench. Judges also frequently serve as community ambassadors with local bar associations and regularly participate in volunteer educational efforts for the bar and educational institutions.

You also should know that the Massachusetts courts systematically review the performance of judges and develop their skills through a robust judicial enhancement program, which includes attorney evaluations, mentoring, videotaping, observations and self assessment.

Judicial Salaries

As to judicial salaries the National Center for State Courts report last July, as Justice Greaney stated, ranks Massachusetts 45th out of the 50 states after accounting for the state's cost of living. This low ranking has significant consequences for the present members of the judiciary and adversely impacts the system's ability to attract the best and brightest of the trial bar.

The NCSC, which has monitored judicial salary trends since 1974, has identified four key criteria for judicial salaries: equity, regularity, objectivity and separation from politics. These criteria provide a framework for consideration of this issue.

Equity

Relative to equity, Justice Greaney has submitted comprehensive documentation of federal judicial salaries along with a wide range of salaries for other public and private sector officials, as a basis for comparison and consideration.

Our ongoing concern with salary does not mean that we expect judges' salaries to match private sector-level compensation. However, the extent of the gap between

judicial and private sector salaries creates a 'barrier to entry' for potential candidates and causes morale issues within the judiciary.

Salary levels should ensure a balanced pool of qualified candidates with a broad range of experience and backgrounds. However, judicial appointments in recent years reflect an overrepresentation of public sector attorneys.

Private sector practitioners with the necessary experience generally cannot consider a judicial appointment, since they are at their peak earning capacity and often face staggering college tuitions for their children.

Regularity

The history of judicial compensation increases reflect a six-year cycle with varying adjustments. This unpredictability complicates important family decisions about the ability to meet future expenses and creates in the judiciary a sense of frustration and anxiety. Any compensation level established as a baseline should include a regular cost of living adjustment.

Objectivity

Judicial compensation should be set and revised by reference to an agreed-upon set of objective criteria arrived at through a transparent process that can be easily understood by the public.

Separation from Politics

Decisions on judicial compensation should not be a basis for expressing dissatisfaction with specific court decisions. Nor should it be adversely affected because of disagreement between the branches of government over policy issues unrelated to the compensation of public officials.

It is apparent that the methodology for setting judicial salaries in the Commonwealth of Massachusetts does not rely on the four criteria identified by the NCSC. Salary increases have neither been regular nor based on objective factors.

Compensation is not equitable when compared with compensation of judges in other states or with the federal sector. And reliance upon the present practice has the potential to cast a shadow on public perception of judicial independence

Collateral Consequences of Judicial Compensation

Historically and by custom judicial salaries set an arbitrary ceiling on every position in the court system. Such a cap impedes the hiring and retention of qualified managers and administrators. This cap also creates a compression between the salaries of managers and union personnel.

Since 1989, judges have received an average annual increase of 2.5 percent. In contrast, court employees represented by unions, have received annual increases of 3 percent along with annual step increases of 4 percent.

As salaries of union-represented employees rise toward the judicial salary cap, their compensation is overtaking the salaries of their managers. This compression is detrimental to the morale and effective management of the organization.

Serving as a judge in Massachusetts is a privilege. The position, although quite challenging, provides an extraordinary opportunity to have a significant impact on people's lives on a daily basis. The position requires women and men who are strong in character, personality and judgment and who are intellectually equal to the finest lawyers who practice before them.

Judicial excellence is not driven by salaries alone. However, to sustain excellence in the judicial system, it is critical to create a compensation structure that fairly and equitably confirms the essential nature of the work performed by judges in upholding the rule of law -- the bedrock of a stable and democratic society.

Attachment 1

Statements of the Departmental Chief Justices

Boston Municipal Court Department – Chief Justice Charles Ray Johnson

The Justices of the Boston Municipal Court Department serve an urban population with complex, diverse social and economic needs within the Commonwealth's capital city. Regular civil filings increased nearly 10% over the previous year, and criminal case filings also increased with nearly 40,000 entries across the department. The plague of drugs and violence that ravish the youth of Boston necessitate that judges preside in prioritized-court sessions focused on treatment and the expedited disposition of gun and drug related cases. All judges in the department are involved in the Trial Court's efforts to ensure timely access to justice.

District Court Department – Chief Justice Lynda M. Connolly

The jurisdiction of the District Court includes “slice of life” issues including emotionally charged and highly sensitive civil mental health and substance abuse commitments, jury trials in civil tort and contract actions; jury trials in both felony and misdemeanor criminal cases; arraignments for misdemeanor and capital offenses; domestic violence restraining orders; evictions; small claims; collections cases and motor vehicle citation appeals. Last year alone there were over 784,000 separate matters requiring the attention of a judge or a clerk-magistrate filed in our 62 District Courts, making this department a true Gateway to Justice.

One of our hardest working District Court judges, Daniel J. O'Malley, retired in 2004 because the compensation was insufficient to allow him to educate his college-bound children. Although there was an increase in judicial compensation in 2006, additional District Court judges are currently considering leaving the bench for the same reason.

Housing Court Department – Chief Justice Steven Pierce

The judges of the Housing Court Department meet the high standards that the public has a right to expect from those on the bench. Based on the judicial evaluations I have seen and my personal observation, they are exceedingly hard working and knowledgeable on the law and subject areas related to residential housing. They exhibit great patience and understanding in dealing with a very large, self-represented number of litigants who are often uncertain and emotional regarding the issue -- possession of a dwelling unit -- at the center of the proceeding. As with the members of the judiciary in the other departments, I believe that they are most worthy of a regular and upward compensation adjustment.

Juvenile Court Department – Chief Justice Martha P. Grace

Juvenile Court Judges see the underbelly of society every day as they deal with the Commonwealth's most vulnerable population – the children who suffer unimaginable abuse and neglect. From the mother who walks the streets selling her food stamps for drugs to feed her habit to the parent(s) with severe mental illness to the exposure of these children to a constant diet of explosive violence from an early age – these are the cases that come before a Juvenile Court Judge every day, in increasing number and complexity. The courts are the repository for all of society's ills, such as poverty, unemployment and homelessness, yet we cannot solve these problems.

The Juvenile Court may be the only place where a judge can make a difference in the life of a child, one case at a time, but those decisions exact a heavy price emotionally, and the weight of having to decide whether a child must be removed from its parents forever is a great burden.

So many of these children grow up in an atmosphere where violence is the norm and they operate on their own sense of survival. Juvenile Judges must balance the needs of protecting the public against finding a solution for the problems of the youth.

The commitment of the Juvenile Court Judges to their work is extraordinary and should be recognized by appropriate compensation.

Probate and Family Court Department – Chief Justice Paula M. Carey

The judges of the Probate and Family court are being asked to decide some of the cutting edge legal issues of our time and face a tremendous workload both on and off the bench. Many judges do not use lobby days, as to do so would cause them to fall behind in scheduling their work. Almost all family law cases require judicial hearings and are not heard administratively. The volume of "family" cases in our court has risen from 94,773 in FY 2003 to 101,634 in FY 2007. There are no juries in the Probate and Family Court and judges are required to make written findings of fact and rulings of law in just about every case that comes before the court.

Superior Court Department – Chief Justice Barbara J. Rouse

In 2007, the Superior Court, notwithstanding the increased number of criminal cases filed by the District Attorneys, disposed of 5,940 felonies, including rapes, armed robberies, narcotic offenses, and a record number of homicides due, in large measure, to careful judicial case management and the implementation of time standards. With respect to its civil caseload, the Court, by virtue of its continued commitment to more predictable trial dates and timely decisions, many of which are written at night and on weekends, disposed of 24, 863 cases.

Note: This attachment will be supplemented to include the statement of Land Court Chief Justice Karyn F. Scheier upon her return.

Attachment 2

Overview of the Massachusetts Trial Court

	Divisions	Judges*	Caseload for FY07
Boston Municipal Court	8	30	132,025
District Court	62	158	784,250
Housing	5	10	62,715
Juvenile	11	41	62,910
Land	1	7	27,881
Probate & Family	14	51	157,181
Superior	14	82	36,757
		379	1,263,089

* This number represents the total number of authorized judicial positions within the seven trial court departments.

Massachusetts Judicial Salary History

1989 – 1994	\$80,359
Jan 1995	\$85,176
Jul 1995	\$90,289
Jan 1996	\$95,709
Jul 1998	\$105,281
Jul 1999	\$109,492
2000 - 2006	\$112,777
2006 - present	\$129,694

Average Annual Increase Since 1989 2.5%