

SUBMISSION OF
THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT
OF THE STATE OF NEW YORK

Introduction

The Coalition of New York State Judicial Associations (the “Coalition”), of which the Association of Justices of the Supreme Court of the State of New York (the “Association”) is a part, proposed, inter alia, a compensation increase with two levels for trial court judges: (1) Judges and Supreme Court Justices (the “Justices”) presiding over trial courts of superior jurisdiction would receive one level of salary; and (2) Judges presiding over trial courts of lesser jurisdiction would receive 95% of that salary. Each of the Judicial Associations within the Coalition has reserved the right to submit a separate position statement that raises matters of individual concern. Therefore, the Association submits this report for the purpose of demonstrating the propriety of the Justices receiving a higher level of compensation than the other trial courts of superior jurisdiction within the first level. While the Association believes an increase is appropriate and supports an increase in judicial salary for every judge in the State of New York, which is not only deserved but extremely overdue, the Association would be remiss if it did not further advocate for its members to receive this proposed higher increase in salary.

As will be explained fully below, the Supreme Court is the only trial court of unlimited, general jurisdiction within the State of New York. This jurisdictional distinction, unique to the Justices, requires the Justices to adjudicate cases that run the gamut of New York State law with amounts in controversy that are potentially millions of dollars above that of other trial courts. This additional responsibility entitles the Justices to higher compensation, a fact that has been well recognized for many years.

This report will provide the New York State Judicial Compensation Commission (the “Commission”) with support for a recommendation of a higher level of compensation for the Justices by explaining the jurisdictional distinction between the New York Supreme Court and the other trial courts of superior jurisdiction, the historical support, not only in New York but in other state courts’ systems for higher compensation for the Justices, the geographical and population distinctions of the Justices’ judicial districts, and the rationally based legal analysis.

New York State Court Structure

New York’s Unified Court system consists of three courts of appellate jurisdiction and nine trial courts. New York’s courts of appellate jurisdiction include the Court of Appeals, the Appellate Divisions of the Supreme Court, and the Appellate Terms of the Supreme Court. The State’s trial court system is composed of two levels: the trial courts of superior jurisdiction and those of lesser jurisdiction. The trial courts of superior jurisdiction include: the Supreme Court, Court of Claims, County Court, Family Court, and Surrogate’s Court. *See State of New York Report of the Chief Administrative Judge of the Courts (1996)*. The trial courts of lesser jurisdiction include: the Civil and Criminal Courts of New York City, District Courts, and City Courts outside of New York City. *See id.* Although the Supreme Court, like the Court of Claims, County Court, Family Court, and Surrogate’s Court is of superior jurisdiction, the Supreme Court also has unlimited general jurisdiction. The breadth of cases heard by the Justices is vastly greater than any other of the above mentioned courts.

New York Supreme Court

At the trial level, the Supreme Court is the main court with jurisdiction state-wide, divided across thirteen judicial districts, in four judicial departments.¹ At the appellate level, the Appellate Divisions of the Supreme Court are divided among the four departments. The First and Second Departments have also established Appellate Terms, which are additional intermediate appellate courts.²

Unlike the other courts of superior jurisdiction, the Supreme Court has unlimited, original jurisdiction and concurrent jurisdiction. *See* State of New York Report of the Chief Administrative Judge of the Courts (1996); David A. Siegel, NY Practice, § 12 (5th ed. 2011). The Supreme Court's general jurisdiction is secured by the New York Constitution Article VI, section 7(b), which effectively provides that when new actions are created, Supreme Court has jurisdiction from the new law automatically, even if some other court is named in the jurisdiction-conferring statute. *See* Siegel, NY Practice, § 12. For example, the Supreme Court may take the account of a trustee, probate a will and exercise jurisdiction in other matters where the Surrogate's Court also has jurisdiction. *In re Malloy's Estate*, 278 N.Y. 429, 432 (1938). The Supreme Court's concurrent jurisdiction includes all criminal and family proceedings—matters traditionally litigated in County Court (outside New York City) and Family Court. This broad jurisdiction, encompassing the range of probate proceedings, criminal matters and commercial actions of any monetary amount, requires the Justices to have an extensive legal expertise and be able, with regularity, to adjudicate matters in numerous areas of law.

¹ N.Y. Const. art. VI § 4(a); N.Y. Judiciary Law §§ 70, 140.

² N.Y. Const. art. VI, § 8(a); N.Y. Judiciary Law § 79.

Although not a prerequisite, historically, Supreme Court nominees usually have been selected from sitting Criminal Court, Civil Court or Family Court Judges. *See* The Bar Association of the City of New York Special Committee to Encourage Judicial Service, *2010-How to Become a Judge*, available at www.abcny.org/pdf/report/become_a_judge.pdf. Therefore, more often than not the Justices are more experienced when they become elected. This position also specifically qualifies a Justice to be an Appellate Division Justice in New York. A judge must have been elected a Supreme Court Justice to be eligible for a position on the Appellate Division.

The fact that a judge must have been elected a Justice to be eligible for a position on the Appellate Division demonstrates the difficulty and the esteem placed on holding such a position. The Justices should not just be lauded for their qualifications, experience and expertise but compensated accordingly. It is clear that being a Justice requires unique skill, and demands unique responsibility.

Other Courts of Superior Jurisdiction

The Unified Court System also establishes several courts of superior jurisdiction that have limited or specialized jurisdiction: Family Court, Surrogate's Court, Court of Claims and County Court. The authority of these courts is the same regardless of the courts' locations.

- Family Court hears most matters involving children and families, including issues of custody, visitation, guardianship, child support, spousal and ex-spousal support, adoptions, paternity, child abuse and neglect, and children in need of supervision. Family Court has exclusive jurisdiction over domestic violence matters and in cases where juveniles are accused of crimes.³ Family Court judges are elected for ten-year terms in

³ N.Y. Const. art. VI, § 13; Family Court Act § 131.

each county outside New York City and are appointed by the Mayor for ten-year terms in New York City. *See* N.Y. Const. Art. VI § 13(a); Fam. Ct. Act § 123.

- The Court of Claims hears all claims for monetary damages against the State of New York, as well as certain state entities.⁴ Court of Claims judges are appointed by the Governor, with the advice and consent of the State Senate, for nine-year terms. *See* N.Y. Ct. Cl. Act § 2(3).
- Surrogates' Court has authority over matters of wills, estates, and probate, as well as shared authority with Family Court over adoptions.⁵ Surrogates are elected for terms of ten years in each county outside New York City and for terms of fourteen years in each county in New York City. *See* N.Y. Const. Art. VI § 12(c);
- County Courts have jurisdiction in each county outside New York City over felony matters, and shared authority with inferior courts over misdemeanors, minor offenses, and violations.⁶ The jurisdiction of County Court over civil matters is the same as the New York City Civil Court's authority; it hears claims for up to \$25,000. County Courts also hear appeals from City, and Town and Village Courts. County Court judges are elected in each county for terms of ten years. *See* State of New York Report of the Chief Administrative Judge of the Courts (1996).

The distinctions among each of the trial courts of superior jurisdiction are provided in table form below.

Court	Jurisdiction	Term	Current Salary
Supreme Court Justices	Unlimited, Original	Elected to 14- year terms ⁸	\$136,700
Court of Claims Judges	Monetary Claims against the State	Appointed by the Governor with Senate approval to 9-year terms	\$136,700
County Court Judges (sitting in Westchester, Nassau, and Suffolk Counties)	Felony Matters and Civil Matter up to \$25,000	Elected to 10-year terms	\$136,700

⁴ N.Y. Const. art. VI, §9; Court of Claims Act § 9.

⁵ N.Y. Const. art. VI, § 12; Judiciary Law § 179.

⁶ N.Y. Const. art. VI, § 11; N.Y. Judiciary Law § 190.

⁷ Source: National Center for State Courts.

⁸ Supreme Court Justices are elected by judicial district for fourteen-year terms. *See* N.Y. Const. Art. VI § 6(c).

County Court Judges (sitting in all other counties)	Felony Matters and Civil Matter up to \$25,000	Elected to 10-year terms	\$119,800 up to \$131,400
Surrogate Court Judges (sitting in Westchester, Nassau, Suffolk and New York City)	Affairs of Decedents and Estates	Elected to 10-year terms in NYC; Elected to 14-year terms outside of NYC	\$136,700
Surrogate Court Judges (sitting in all other counties)	Affairs of Decedents and Estates	Elected to 10-year terms in NYC; Elected to 14-year terms outside of NYC	\$119,800 up to \$135,800
Family Court Judges (sitting in Westchester, Nassau, Suffolk and New York City)	Matters involving children and families except divorce, separation and annulment proceedings	Elected to 10-year terms outside NYC; Appointed by the Mayor for 10-year terms in NYC	\$136,700
Family Court Judges (sitting in all other counties)	Matters involving children and families except divorce, separation and annulment proceedings	Elected to 10-year terms outside NYC; Appointed by the Mayor for 10-year terms in NYC	\$119,800 up to \$127,000

The jurisdictional differences between the Supreme Court and the other trial courts of superior jurisdiction are apparent. The original, unlimited and concurrent jurisdiction of the Supreme Court lends itself to actions that are more diverse and complex with greater amounts in controversy. Moreover, the lower trial courts and the Family Court historically have been stepping stones to become a Justice. See The Bar Association of the City of New York Special Committee to Encourage Judicial Service, *2010- How to become a Judge*, available at www.abcnyc.org/pdf/report/become_a_judge.pdf. These distinctions should be considered when the Commission determines the level of compensation the Justices deserve.

Historical Analysis: Judicial Compensation Trends Since Formation of the Unified Court System

In 1976, New York State passed the Unified Court Budget Act (“UCBA”), which established that formerly locally paid judges would become state salaried employees. *See* L. 1976, c. 966. Pursuant to the UCBA, as of April 1, 1977,⁹ New York State assumed responsibility for paying the full operational costs of all of its courts except for Town and Village Justice Courts. *See* John R. Dunne & Milton Mollen, *Report of the Commission to Review the Compensation of New York State Judges* (March 1998), available at http://www.courts.state.ny.us/press/old_keep/salary.shtml. These operational costs included judicial salaries. *Id.*

New York State’s judicial salary schedule is established in Judiciary Law §§ 221 and 223. Judges in the New York State court system have received six pay increases since the state’s formation of the Unified Court System in 1977. These increases occurred in 1979, 1980, 1984, 1987, 1993-94, and 1999. According to the National Center for State Courts (“NCSC”), “The history of judicial salaries [in New York State] since 1977 . . . reveals a pattern of long periods of salary stagnation, interrupted by occasional ‘catch-up’ increases.” National Center for State Courts, *Judicial Compensation in New York: A National Perspective* (May, 2007) p. 7, available at <http://www.nycourts.gov/publications/pdfs/NCSCJudicialCompReport.pdf>. Moreover, NSCS’ May 2007 Report characterizes the New York Legislature’s judicial pay increase decisions as “the product of a political process lacking in transparency.” *Id.* The absence of legislative

⁹ Accordingly, this analysis will utilize 1977 as a starting point from which the history of judicial salaries within New York State’s Unified Court System.

records that explain judicial pay increases or that account for disparities and similarities in compensation between judges of different courts corroborate this characterization.

There have been six pay increases that the judges of New York State's Unified Court System have received since 1977. Analysis of such pay increases and the resulting judicial salaries will demonstrate that since the Unified Court System's formation in 1977, the Justices have been consistently paid the highest salaries in the range permitted to Judges of Courts of superior jurisdiction. This demonstrates an acknowledgement of the increased difficulty and responsibility undertaken by the Justices. *See Coalition of New York State Judicial Association, Presentation to the New York State Judicial Compensation Committee (May, 2011), p. 31.* Indeed of the sixty-two counties within the State of New York there are only eight counties where other judges of courts of superior jurisdiction have received a salary equal to that of a Justice.

Judicial Salary Increase of 1979

Judges of New York State's Unified Court System received their first salary increase in 1979. *See L. 1979, c. 55.* This pay raise consisted of three staggered percentage increases in judicial compensation; it increased judicial salaries by 7%, effective retroactively to October 1, 1978; 7%, effective October 1, 1979; and 3.39%, effective October 1, 1980. Following October 1, 1980, New York State judicial salaries were as follows:

Presiding Justice of the Supreme Court, Appellate Division	\$66,000
Associate Justices of the Supreme Court Appellate Divisions	\$62,000
Supreme Court Justices	\$58,000
Presiding Judge of the Court of Claims	\$62,000
Associate Judges of the Court of Claims	\$58,000
County Court Judges	\$48,000-\$58,000
Family Court Judges	\$48,000-\$58,000
Surrogate's Court Judges	\$48,000-\$58,000

Judicial Salary Increase of 1980

In 1980, the New York State legislature provided all state judges with two percent increases on their existing salaries: 5% effective January 1, 1981 and 7% effective January 1, 1982. *See* L. 1980, c. 881, § 14. Accordingly, this salary increase did not affect existing salary differences between judges of different courts within New York's Unified Court System.

Judicial Salary Increase of 1984

The New York State legislature enacted the Unified Court System's third salary increase in 1984. *See* L. 1984, c. 986. Judicial salaries were as follows after this third salary increase:

Presiding Justice of the Supreme Court, Appellate Division	\$90,000
Associate Justices of the Supreme Court Appellate Divisions	\$87,500
Supreme Court Justices	\$82,000
Presiding Judge of the Court of Claims	\$87,500
Associate Judges of the Court of Claims	\$82,000
County Court Judges	\$68,000-\$82,000
Family Court Judges	\$68,000-\$82,000
Surrogate's Court Judges	\$68,000-\$82,000

Judicial Salary Increase of 1987

In 1987, the New York State Legislature provided Unified Court System judges with their fourth pay increase since 1977. *See* L. 1987, c. 263. Following this fourth pay increase, the salaries of New York State's Unified Court System judges were as follows:

Presiding Justice of the Supreme Court, Appellate Division	\$107,500
Associate Justices of the Supreme Court Appellate Divisions	\$102,500
Supreme Court Justices	\$95,000
Presiding Judge of the Court of Claims	\$102,500
Associate Judges of the Court of Claims	\$95,000
County Court Judges	\$82,000-\$95,000
Family Court Judges	\$82,000-\$95,000
Surrogate's Court Judges	\$82,000-\$95,000

Judicial Salary Increase of 1993-1994

In 1993 and 1994, the New York State legislature made four incremental increases to all judicial salaries within the Unified Court System. *See* L. 1993, c. 60. Following these increases, the salaries of New York State's Unified Court System judges were as follows:

Presiding Justice of the Supreme Court, Appellate Division	\$122,000
Associate Justices of the Supreme Court Appellate Divisions	\$119,000
Supreme Court Justices	\$113,000
Presiding Judge of the Court of Claims	\$119,000
Associate Judges of the Court of Claims	\$113,000
County Court Judges	\$99,000-\$113,000
Family Court Judges	\$99,000-\$113,000
Surrogate's Court Judges	\$99,000-\$113,000

Judicial Salary Increase of 1999

The judges of New York State's Unified Court System received their most recent salary increase in 1999. *See* L. 1998, c. 630. At that time, the New York State Legislature increased

the salaries of all Unified Court System judges by 21%. Current judicial salaries in New York State are as follows:

Table 6. Current Judicial Salaries Since 1999	
Presiding Justice of the Supreme Court, Appellate Division	\$147,600
Associate Justices of the Supreme Court Appellate Divisions	\$144,000
Supreme Court Justices	\$136,700
Presiding Judge of the Court of Claims	\$144,000
Associate Judges of the Court of Claims	\$136,700
County Court Judges	\$119,800-\$136,700
Family Court Judges	\$119,800-\$136,700
Surrogate's Court Judges	\$119,800-\$136,700

As previously noted, for each of the six pay increases that the judges of New York State's Unified Court System have received since 1977, the Justices have been consistently paid the highest salaries of the range of salaries paid to trial courts of superior jurisdiction. See Coalition of New York State Judicial Association, *Presentation to the New York State Judicial Compensation Committee* (May, 2011), p. 31. Indeed, there are only eight counties in New York, Westchester, Nassau, Suffolk Counties and the five counties of New York City, where judges of the Court of Claims, Surrogate's, Family and County Courts have received a salary equal to that of a Justice. Historically, the Justices have been paid at the highest level of the range of compensation for judges who preside over courts of superior jurisdiction regardless of what county they were located in. The distinctions among the Supreme Court and the other courts and the historical trend of judicial compensation support the propriety of the Justices receiving a stepped-up level of compensation.

Geographical and Population Distinctions

An examination of the thirteen judicial districts within the State of New York provides additional support for providing the Justices with a higher level of compensation. The judicial districts can be divided into two separate categories: (1) those with a population above approximately 2 million people or less than 2,500 square miles;¹⁰ and (2) those with a population below approximately 1.5 million people or greater than 5,000 square miles.^{11 12}

The Justices elected to the first category of judicial districts that are not expansive in land area preside over courts in areas with populations on average of 5.8 times greater than any of the other counties in New York. The Justices elected to the second category of judicial districts with the larger land area travel within the judicial district to facilitate the hearing of cases because there are not enough Justices elected within each judicial district for each of the counties within these judicial districts. These Justices must travel between 5,000 square miles and 12,000 square miles as they “travel the circuit” to preside over cases in the different counties of their judicial district. Unlike the judges of the other trial courts of superior jurisdiction, the Justices must either preside over courts within judicial districts of substantial populations or substantial size. The substantial population and travel that is incurred support a higher level of compensation for the Justices.

It should also be noted that, without some degree of monetary incentive, few, if any county level judges will endeavor to run for election to the Supreme Court in an entire judicial

¹⁰ The first category of judicial districts, for the purpose of this comparison, includes: the 1st, 2nd, 9th, 10th, 11th and 12th judicial districts.

¹¹ The second category of judicial districts, for the purpose of this comparison, includes: the 3rd, 4th, 5th, 6th, 7th, and 8th judicial districts.

¹² The thirteenth judicial district, which consists of Richmond County, is an exception.

district (e.g., the 4th judicial district requires election in eleven counties; the 6th judicial district requires election in ten counties),¹³ when the judge would be able to choose a far less burdensome run for re-election in his or her own, single, county. This disincentive to run for election would dilute the pool of qualified candidates for the Supreme Court, and eventually, the quality of the Appellate Division Justices, who are appointed from the existing group of elected Justices.¹⁴

The table below demonstrates the distinctions in the population and land area among the counties and groups the counties into their respective judicial district.

Judicial Districts	County	Population	Land Area (in square miles)	Total Number of Counties	Total Population	Total Land Area (in square miles)
1st Judicial District	New York	1,585,873	22.96	1	1,585,873	22.96
2nd Judicial District	Kings	2,504,700	70.61	1	2,504,700	70.61
3rd Judicial District	Albany	304,204	523.45	7	868,739	5,179.1
	Columbia	63,096	635.73			
	Greene	49,221	647.75			
	Rensselaer	159,429	653.96			
	Schoharie	32,749	622.02			
	Sullivan	77,547	969.71			
	Ulster	182,493	1,126.48			

¹³ 13 N.Y. Const. art. VI § 6(a) and (c).

¹⁴ 14 N.Y. Const. art. VI § 4(c).

¹⁵ U.S. Census Bureau available at <http://quickfacts.census.gov/qfd/states/36/36001.html>.

4th Judicial District	Clinton	82,128	1,038.95	11	898,884	12,496.89
	Essex	39,370	1,796.80			
	Franklin	51,599	1,631.49			
	Fulton	55,531	496.17			
	Hamilton	4,836	1,720.39			
	Montgomery	50,219	404.82			
	St. Lawrence	111,944	2,685.60			
	Saratoga	219,607	811.84			
	Schenectady	154,727	206.10			
	Warren	65,707	869.29			
	Washington	63,216	835.44			
5th Judicial District	Herkimer	64,519	1,411.25	6	1,031,848	6,905.16
	Jefferson	116,229	1,272.20			
	Lewis	27,087	1,275.42			
	Oneida	234,878	1,212.70			
	Onondaga	467,026	780.29			
	Oswego	122,109	953.30			
6th Judicial District	Broome	200,600	706.82	10	743,956	6,937.48
	Chemung	88,830	408.17			
	Chenango	50,477	894.36			
	Cortland	49,336	499.65			
	Delaware	47,980	1,446.37			
	Madison	73,442	655.86			
	Otsego	62,259	1,002.80			
	Schuyler	18,343	328.71			
	Tioga	51,125	518.69			
	Tompkins	101,564	476.05			
7th Judicial District	Cayuga	80,026	693.18	8	1,251,055	5,288.98
	Livingston	65,393	632.13			
	Monroe	744,344	659.29			
	Ontario	107,931	644.38			
	Seneca	35,251	324.91			
	Steuben	98,990	1,392.64			
	Wayne	93,772	604.21			
	Yates	25,348	338.24			
8th Judicial District	Allegany	48,946	1,030.22	8	1,544,794	6,447.70
	Cattaraugus	80,317	1,309.85			
	Chautauqua	134,905	1,062.05			
	Erie	919,040	1,044.21			
	Genesee	60,079	494.11			
	Niagara	216,469	522.95			
	Orleans	42,883	391.40			

	Wyoming	42,155	592.91			
9th Judicial District	Dutchess	297,488	801.59	5	2,030,811	2,456.25
	Orange	372,813	816.34			
	Putnam	99,710	231.28			
	Rockland	311,687	174.22			
	Westchester	949,113	432.82			
10th Judicial District	Nassau	1,339,532	286.69	2	2,832,882	1,198.89
	Suffolk	1,493,350	912.20			
11th Judicial District	Queens	2,230,722	42.03	1	2,230,722	42.03
12th Judicial District	Bronx	1,385,108	109.24	1	1,385,108	109.24
13th Judicial District	Richmond	468,730	58.48	1	468,730	58.48

Correlation of Jurisdiction and Judicial Compensation of Other States

In support of the proposition that the Justices in fact deserve higher compensation, the majority of states that have state-funded special or limited jurisdiction trial courts¹⁶ provide a higher maximum salary to judges assigned to general jurisdiction courts than to those sitting on limited jurisdiction courts. Thirty-seven states have at least one state-funded limited or special jurisdiction trial court in addition to one or more general jurisdiction trial court.¹⁷ Twenty-one of these states provide a higher maximum salary for general jurisdiction court judges (*see* Table 8). Only sixteen states currently provide judges from at least one limited or special jurisdiction court with an equivalent or greater maximum salary (*see* Table 9). New York is included in these sixteen states, however, as explained above, the Justices are paid at the highest range of these

¹⁶ The following thirteen states do not have state-funded limited jurisdiction courts: California, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, North Dakota, Oregon, South Dakota, Tennessee, Texas and Wisconsin. These states either do not have any limited jurisdiction courts or the salaries for judges assigned to limited jurisdiction courts are determined by local legislation and, therefore, vary by locality.

¹⁷ If a limited or special jurisdiction court is staffed by judges from the general jurisdiction court, that court was not considered a limited jurisdiction court for the purposes of this analysis. In addition, locally-determined salaries and part-time salaries were not considered.

compensation levels, and there are only eight counties where judges of specialized jurisdiction are compensated at the same level as the Justices.

Table 8. States with Higher Maximum General Jurisdiction Court Judge Salaries¹⁸

State	Maximum General Jurisdiction Court Judge Salary	Maximum Limited Jurisdiction Court Judge Salary	Percentage of General Jurisdiction Court Judge Salary
1. Alabama	\$149,936	\$149,866	99.99%
2. Alaska	\$174,396	\$147,876	84.79%
3. Arizona	\$145,000	\$101,500	70%
4. Arkansas	\$136,257	\$121,816	89.40%
5. Connecticut	\$146,780	\$122,000	82.86%
6. Delaware	\$168,850	\$123,067 ¹⁹	72.89%
7. Florida	\$142,178	\$134,280	94.45%
8. Georgia	\$190,492	\$172,025	90.31%
9. Hawaii	\$136,127	\$128,296	94.25%
10. Kentucky	\$124,620	\$112,668	90.41%
11. Maine	\$111,969	\$73,000	65.20%
12. Maryland	\$140,352	\$127,252	90.67%
13. Nevada	\$160,000	\$153,599	95.99%
14. New Mexico	\$111,631	\$106,050	95%
15. North Carolina	\$124,382	\$109,372	87.93%
16. Pennsylvania	\$164,602	\$160,793	97.69%
17. South Carolina	\$130,312	\$126,833	97.33%
18. Virginia	\$158,134	\$142,329	90%
19. Washington	\$148,832	\$141,710	95.22%
20. West Virginia	\$116,000	\$82,500	71.12%

¹⁸ Source: National Center for State Courts.

¹⁹ The judges of limited jurisdiction courts in Delaware receive a lower salary than the superior court judges with general jurisdiction. See http://www.ncsconline.org/D_KIS/Salary_Survey/query_report_simple.asp. However, vice-chancellors' of the Court of Chancery receive \$174,950. See *id.* The Court of Chancery is listed both as general jurisdiction court and a limited/specialized jurisdiction court. Compare NCSC Delaware Court Structure available at <http://www.ncsc.org/Information-and-Resources/Browse-by-State/StateCourtWebsites.aspx>, with NCSC Survey of Judicial Salaries (2010), available at <http://www.ncsc.org/topics/judicial-officers/judicial-compensation/resource-guide.aspx>. It appears that the Court of Chancery's jurisdiction is more akin to that of a general jurisdiction court. See *id.* It can hear any tort, contract or real property claim without an amount-in-controversy limitation. See *id.* In addition, it has exclusive jurisdiction over estate/probate matters. See *id.* The Court of Chancery's only limitation is that it cannot hear felony criminal matters, which are exclusively the jurisdiction of the Superior Court. See *id.* The salary disparity between the Superior Court and the Court of Chancery may be explained in that both courts have general jurisdiction and vice-chancellors' expertise in estate/probate matters may be seen to justify a higher level of compensation.

21. Wyoming	\$125,200	\$102,800	82.10%
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State	Maximum GJC Judge Salary	Maximum LJC Judge Salary	Percentage of GJC Judge Salary
1. Colorado	\$128,598	\$128,598 ²¹	100%
2. Indiana	\$125,647	\$125,647	100%
3. Louisiana	\$136,544	\$136,544	100%
4. Massachusetts	\$129,694	\$129,694	100%
5. Michigan	\$139,919	\$139,919	100%
6. Mississippi	\$104,170	\$104,170	100%
7. Montana	\$106,170	\$106,170	100%
8. Nebraska	\$132,053	\$132,053	100%
9. New Hampshire	\$137,804	\$137,804	100%
10. New Jersey	\$165,000	\$165,000	100%
11. New York	\$136,700	\$137,000	100%
12. Ohio	\$121,350	\$121,350	100%
13. Oklahoma	\$124,373	\$124,373	100%
14. Rhode Island	\$144,861	\$144,861	100%
15. Utah	\$132,150	\$132,150	100%
16. Vermont	\$122,867	\$122,867	100%

State salary commissions that have addressed disparity in judicial compensation between different trial courts have pointed to respective scope of jurisdiction, expertise and degree of accountability as important factors in determining judicial pay. For example, in explaining its recommendation of higher salaries for general jurisdiction court judges, the Washington state salary commission noted that general jurisdiction court judges have “strongly advanced bodies of

²⁰ Source: National Center for State Courts.

²¹ The limited jurisdiction courts in Colorado are the County Courts. *See* http://www.ncsconline.org/D_KIS/Salary_Survey/query_report_simple.asp. All county court judges, except Denver County Court Judges, receive a lower salary than the district court judges with general jurisdiction in Colorado. *See id.* Denver County Court Judges receive \$152,445 in salary. *See id.* Although the compensation of County Court judges is generally set by state law, the compensation of County Court judges in Denver is actually set by local legislation. *Compare* Colo. Rev. Stat. § 13-30-103(i) (2011) (“Each judge of the county court of the city and county of Denver shall receive an annual salary as provided by the ordinances of said city and county.”) with Colo. Rev. Stat. § 13-30-103(j), (l) (setting fixed salaries for all other County Court judges). For this comparison, locally set salaries are not included; therefore, Denver County Judge salaries have been disregarded.

knowledge required to be applied in a variety of situations that may be unclear or untested and [are] accountable for the soundness of decisions having a very large societal impact.”

Washington Citizens’ Commission on Salaries for Elected Officials, *Study on Salaries of Legislators and the Judiciary* 6 (1994), available at http://www.salaries.wa.gov/documents/2004_Owen20_Study_Leg-Jud_000.pdf. While the commission found that limited jurisdiction court judges possess a “body of knowledge [that] approaches that of Superior Court Judge[s],” it found that their “[a]ccountability [was] limited by [the] scope of civil judgments (maximum \$50,000) and of sentencing.” *Id.*

A Pennsylvania court noted that “a *unified judicial system* requires that all justices . . . of a single level/court performing similar functions and exercising similar authority be paid at the *same rate of compensation.*” See *Klein v. State Employees’ Retirement System*, 521 Pa. 330, 340 (Pa. 1989) (emphasis in original). Thus, the strongest justification for disparate pay between judges is a difference in judicial function and scope of responsibility, as with the Justices.

Disparate compensation levels are more common for judges of non-specialized limited jurisdiction courts, whose jurisdiction is primarily constrained by amount-in-controversy limitations. For example, only six states of the sixteen states that have separate state-funded family or juvenile courts provide lower salaries to family or juvenile court judges while eleven provide salaries equivalent to general jurisdiction court judges (*see* Table 10). Of the eleven states that have separate, state-funded probate courts, only Connecticut and Georgia provide probate judges with a lower salary than judges selected for service in general jurisdiction courts (*see* Table 11). Thus, the practice of certain states provides less support for the argument that the

Justices should be compensated at a higher rate than those assigned to New York Family Court, Surrogates' Court, County Courts or the Court of Claims. Despite these practices, there is support for the Justices to be paid at a higher level than judges of courts of superior jurisdiction.

Table 10. Comparable Maximum Salaries in States with Separate State-Funded Family or Juvenile Courts²²

State	Maximum GJC Judge Salary	Maximum Family / Juvenile Court Judge Salary	Percentage of GJC Judge Salary
1. Colorado	\$128,598	\$128,598	100%
2. Connecticut	\$146,780	\$121,615	82.86%
3. Delaware	\$168,850	\$168,850	100%
4. Georgia	\$190,492	\$172,025	90.31%
5. Louisiana	\$136,544	\$136,544	100%
6. Maine	\$111,969	\$73,000	65.20%
7. Massachusetts	\$129,694	\$129,694	100%
8. Nebraska	\$132,053	\$132,053	100%
9. New Hampshire	\$137,804	\$137,804	100%
10. New York	\$136,700	\$137,000	100%
11. Ohio	\$121,350	\$121,350	100%
12. Rhode Island	\$144,861	\$144,861	100%
13. South Carolina	\$130,312	\$126,833	97.33%
14. Utah	\$132,150	\$132,150	100%
15. Vermont	\$122,867	\$122,867	100%
16. Virginia	\$158,134	\$142,329	90%
17. West Virginia	\$116,000	\$82,500	71.12%

Table 11. Comparable Maximum Salaries in States with Separate State-Funded Probate Courts²³

State	Maximum GJC Judge Salary	Maximum Probate / Surrogates' Court Judge Salary	Percentage of GJC Judge Salary
1. Colorado	\$128,598	\$128,598	100%
2. Connecticut	\$146,780	\$110,085	70%
3. Delaware	\$168,850	\$174,950	103.61%
4. Georgia	\$190,492	\$148,366	77.89%
5. Indiana	\$125,647	\$125,647	100%

²² Source: National Center for State Courts

²³ Source: National Center for State Courts

6. Massachusetts	\$129,694	\$129,694	100%
7. Michigan	\$139,919	\$139,919	100%
8. New Hampshire	\$137,804	\$137,804	100%
9. New York	\$136,700	\$137,000	100%
10. Ohio	\$121,350	\$121,350	100%
11. Vermont	\$122,867	\$122,867	100%

In general, a majority of states with state-funded limited jurisdiction courts provide higher maximum salaries to general jurisdiction court judges. This disparity is typically justified by a difference in required expertise, jurisdiction and accountability. Therefore, not only is there support for compensating the Justices at a higher level, as described below, there is a rational basis for a higher level.

Rational Basis for Supreme Court Justices Higher Compensation

The Association is proposing that the Commission and, thereby, the Legislature acknowledge the distinctions that are apparent between the Supreme Court and the other courts of superior jurisdiction, and compensate the Justices appropriately. Although New York State legislative history reveals no significant discussion of justifications for a system of varying salary levels among different kinds of courts, courts have upheld judicial salary differences as supported by a rational basis. Indeed, the Court of Appeals has held that actual legislative consideration is not required. *See, e.g., Cass v. State of New York*, 58 N.Y.2d 460, 463-64 (1983) (holding that “State-wide disparities in population, caseload, and cost of living . . . provide a rational basis for the Legislature to adopt price differentials for those serving in different areas of the State”); *Cheeseman v. Bellacosa*, 130 A.D.2d 920, 921-22 (3d Dep’t 1987) (rejecting a challenge because “it cannot be found *wholly irrational* to view the respective roles and responsibilities of Family Court Judges and County Judges differently and to reflect those

differences in fixing a salary scale”) (emphasis added). Courts may uphold legislative action based on “rational speculation.” *Affronti v. Crosson*, 95 N.Y.2d 713, 719 (2001) (“[C]ourts may even hypothesize the Legislature's motivation or possible legitimate purpose”).

“[D]istinctions in the jurisdiction, authority, duties and caseloads . . . provide a rational basis for the statutory salary differentials.” *Affronti*, 95 N.Y.2d 713, 718 (2001) (citations omitted); *see also Nelson v. Lippman*, 95 N.Y.2d 952, 953 (2000) (“The significant differences in case filings and dispositions provide a rational basis for the challenged disparity.”) (citations omitted). This is in addition to unequal salaries based on differing costs of living from the location of one courthouse to the next. *See id.* (showing comparable costs of living may negate the rational basis for salary disparities). *See generally Dickinson v. Crosson*, 219 A.D.2d 50, 53-54 (3d Dep’t 1996) (rejecting an equal protection challenge because of “difference[s] between the consumer price index” of the several counties).

As demonstrated in this report, there are important distinctions between the Supreme Court and the other courts of superior jurisdiction: the fact of unlimited general jurisdiction; the substantial population of the judicial districts; and the expansive land area of the judicial districts that are presided over by the Justices all support a higher level of compensation for the Justices. These distinctions provide more than a rational basis for a pay disparity between the Justices and the judges of the other trial courts of superior jurisdiction.

Conclusion

There has not been an increase in judicial compensation for thirteen years. The Court of Appeals determined that the political process that prohibited judicial compensation increases,

violated the New York State Constitutional doctrine of the Separation of Powers. *See Larabee v. Governor*, 14 N.Y.3d 230 (2010). It is now the Commission's responsibility to rectify this inequitable situation and the Legislature and Executive's unconstitutional violations.

In order to adequately remedy this situation, a higher level of compensation for the Justices than the other trial court judges of superior jurisdiction should be adopted. As demonstrated herein, the Justices preside over an extremely diverse caseload because of the jurisdictional distinctions, which requires unique skill and demands unique responsibility. Unlike the other trial court judges of superior jurisdiction, the Justices have a particular experience and expertise that specifically qualifies them to become Appellate judges, and therefore, they should be compensated accordingly. Recommending a higher level of compensation for the Justices is altogether just and necessary to compensate them for over a decade of insufficient salaries.

Dated: July 2011

Honorable Phillip R. Rumsey, President