

**A COMPREHENSIVE ANALYSIS OF JUDICIAL
COMPENSATION, RECRUITMENT AND RETENTION PRACTICES
IN THE STATE OF FLORIDA**

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FLORIDA
CHAMBER
Foundation

weg | The Washington
Economics Group, Inc. ®

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I. EXECUTIVE SUMMARY

This study examines judicial salaries in the state of Florida by developing a 50-state quantitative model that analyzes the salaries of trial judges in Florida as compared with other states. A survey of current judges and attorneys was also conducted to explore issues that impact the retention and recruitment of judges in Florida

Key Findings

The study analysis concluded that the annual wages of Florida’s trial judges are lower by nearly \$16,000 than the 50-state model would predict. The following comparison states were selected in order to provide context for Florida trial judge wage levels: Alabama, California, Georgia, Illinois, New Jersey, New York and Pennsylvania. These comparable states were selected based upon the states’ size, geography and judicial systems. Figure ES-1 below shows the wage comparisons in the selected states.

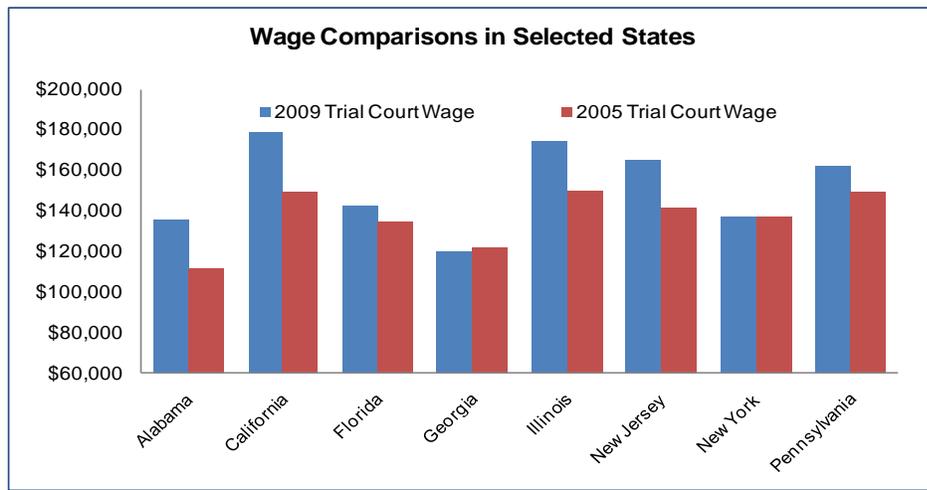


Figure ES-1

Source: National Center for State Courts.

This study concluded that in order for Florida to reach its future economic goals, the state must maintain its attractive business climate by recruiting and retaining the best judges to administer justice. An overall assessment of judicial compensation and workload practices in the state and best practices for recruiting and retaining qualified judges to the state’s judiciary must include investment in competitive salaries relative to what judges could earn in the private sector and in other states, keeping retirement and benefits competitive and ensuring manageable workloads with adequate support staff.

Because the judicial system is an economic development foundation of the state, it is recommended that judges' salaries be brought to levels that reduce the gap with other states and with similar positions of seniority in the private practice. In 2009, annual trial court judge wages in the states included in Figure ES-1 ranged from a high of \$178,789 in California to a low of \$120,252 in Georgia. Florida's 2009 trial court judge wage was \$142,178. Since only one dependent variable can be used in a model, the focus of the analysis was on trial judge wages because it was most complete set of judicial wage data for all 50 states. If incomplete data were used in the regression model it could have the effect of invalidating the results. The detailed findings of the 50-state simple regression model can be found in Table 2.

To provide consistency and certainty in the operation of Florida's judicial system, the study recommends that a dedicated funding source be considered to fund the process of administering justice. The expectation is that creating a specific Trust Fund dedicated to the judicial system would have a stabilizing effect over the long-term for both system operations as well as the recruitment of potential judges.

In addition to the quantitative analysis, WEG conducted two surveys of 1,147 judges, both currently sitting and senior judges, as well as approximately 900 randomly-selected lawyers. The judges surveyed were from all levels of the judiciary. As can be seen in Figure ES-2 for example, Circuit Court, County Court and District Court judges, among others, composed the largest groups of judicial respondents. WEG received a total of 875 responses. As is shown in the Figure below, 11 percent of respondents were lawyers, while the majority of respondents, 89 percent, were judges.

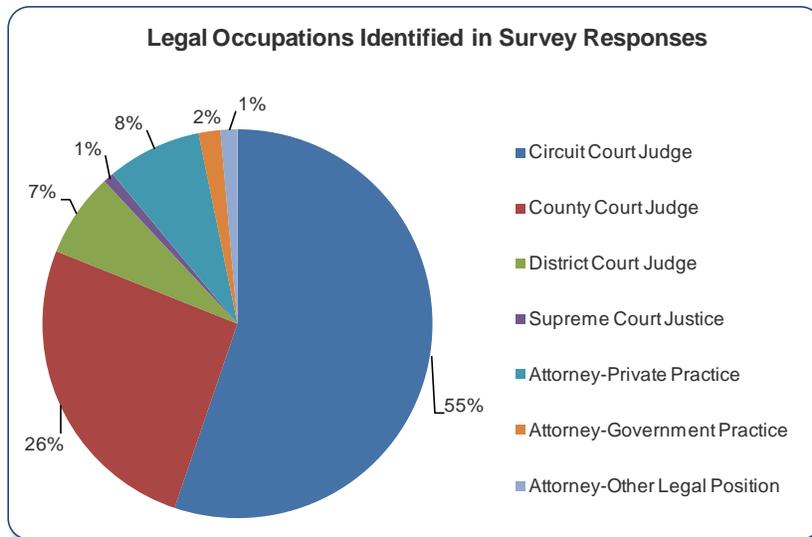


Figure ES-2
Source: The Washington Economics Group, Inc.

Survey Findings

The survey drew several conclusions which are discussed in greater detail in Section III of this study, but the most commonly cited sentiments among respondents, both current and prospective judges, were the following:

- Attorneys can make more money in private practice, so when they leave their practice to become judges, lawyers often take a significant pay cut. The ongoing concern that judges' salaries and benefits may be cut by the Legislature was a common response to the survey.
- One regularly reported incentive to being a judge is the attractive retirement and benefits package offered by the state. This was often construed as making up for the lower judicial salary relative to private practice earnings. Respondents also reported the concern that the rates for the DROP program may be decreased from 6.5 percent to 3 percent.
- Many judges surveyed feel as if the courts system is treated like a state agency, and not a co-equal and separate branch of government.
- Many judges surveyed would like the mandatory retirement age moved to 75 from 70, as it currently stands in the Florida Constitution.
- Judges surveyed as well as prospective judges consider elections and having to run for re-election or stand for retention every six years as a potential deterrent to becoming a judge. Also, respondents cited the expense of running a campaign to be high. Whether or not opposition is drawn, judges must incur qualifying fees between \$5,000 and \$8,000.
- The most commonly reported incentive or reason to join the judiciary was the commitment to public service and the prestige of the office.

II. ECONOMIC DEVELOPMENT IMPACT AND COMPARATIVE STATE ANALYSIS

A. *Economic Development Impacts*

In his essay, *Legal Infrastructure, Judicial Independence, and Economic Development*, Daniel Klerman notes that:

“Economic theory generally supports the idea that judicial independence, and, more generally, high quality courts, facilitate economic growth. Good, independent courts enforce contracts and protect property, and by doing so encourage the investment which is crucial for economic development.”¹

In its *Roadmap to Florida’s Future: 2010-2015 Strategic Plan for Economic Development*, Enterprise Florida notes the importance of the business climate in the state’s overall economic development strategy. An important part of a business climate is an economically efficient and hospitable forum for the resolution/disposition of business and regulatory disputes. This type of forum happens within a framework of an efficient court system where parties in disputes may be certain of swift and fair resolution. Business and legal communities desire efficient judges who can handle cases involving complex business and technology issues competently and in a timely manner.² The Florida Chamber Foundation has also recognized the significance of a proficient and consistent legal system to the operation of private sector activity in its Six Pillars framework under the Civic & Government Systems Pillar.

For Florida to reach its economic development goals, it must maintain its business climate by attracting the best judges to administer its court processes. In this way, Florida can improve the overall infrastructure of the entire state by creating forums that make conducting business in the state more attractive, predictable and reliable.

¹ Daniel M. Klerman, *Legal Infrastructure, Judicial Independence, and Economic Development*, 19 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 427, 433 (2006).

² See, e.g. Choi, S. J., Gulati, G. M. and Posner, E. A. *Are Judges Overpaid? A Skeptical Response to the Judicial Salary Debate*. *The Journal of Legal Analysis*, 1, 1 (2009); Carter-Yamauchi, Charlotte A. *Determining a Judicial Salary Structure: What’s Fair?*, Legislative Reference Bureau, Honolulu Hawaii, Report No. 5, 1997; The Florida Bar’s *Judicial Administration, Selection and Tenure Committee’s 2000-2001 Judicial Benefits and Compensation Report* provided by the Florida Chamber Foundation.

B. *Judicial Salary Analysis*

To analyze Florida state judicial salaries in the context of other states' judicial salaries, a regression model was developed to assist in identifying possible factors currently being used in setting trial court wages. While trial judges in every state perform similar functions, they do so under different employment conditions. Some are elected; others are appointed or specifically selected through merit-based systems – and, among those, some judges must stand alone for a periodic retention vote of the electorate.³ There are also differing conditions with respect to the number of active cases before a judge at any given time and the amount of support staff they may be provided. Regression analysis is a statistical tool used to analyze the relationships between variables and particularly to measure the causal effect of one variable upon another. Data is assembled on the underlying or independent variables, and the regression model estimates the quantitative effect of the causal variables upon the variable that they influence. In addition, the analyst assesses the statistical significance of the estimated relationships as a degree of confidence that the true relationship is close to the estimated relationship.

A 50-state dataset was developed for regression modeling purposes. Because there is little variation over time in judicial salaries, we restrict ourselves to a dataset that consists of a number of cross-sectional variables that may contribute to setting trial judges' salaries from both the employee and the employer perspective. These include factors such as prior year's salary levels, methods of judicial selection, number of judges, population being served and workload. Care was taken to ensure that the independent variables used were not highly correlated with each other as this would tend to generate inaccurate results within the modeling software.

C. *Variables Selected*

The dependent variable used is the 2009 Trial Judge Wage for each state, obtained from the National Center for State Courts. This data were used in place of 2009 data from the Bureau of Labor Statistics, which were not available for all 50 states. In order for the regression to most accurately model the factors impacting judicial salary levels, at least 50 data points were needed to ensure model validity. Independent variables utilized in the modeling process were as follows:

³The description of the selection process is based upon national level terminology used by the American Judicature Society (AJS) in their description of the state selection processes in *Judicial Selection in the States*. Where the AJS material states that judges go through an election process for either selection to office or retention in office, a variable (*i.e.*, "election/retention") was created recording this. Where the process was labeled one of merit selection - *i.e.* it was described as having only the best lawyers considered for appointment as judges, the variable distinguished between those "merit" states and others where the material merely referred to judges being "appointed" by the governor or some other body. Thus there are three categories of variables used in the modeling process: election/retention, merit, and appointed. Where different options were used for different levels of judiciary, the variables recorded the usage of all of them.

- 2009 Population

This variable was selected as a measure because larger states tend to have significantly more urbanized areas which may have an impact on salary levels. 2009 Gross Domestic Product was also considered as a variable but is too highly correlated with population to be included in the model.

- 2005 Trial Court Wage

Wages tend to be sticky, meaning that previous wages are often used as a factor in what wages are currently paid for a position.

- Selection Process

Consistent with the American Judicature Society's descriptions, dummy variables were created that indicated whether the state uses appointment, election/retention, or merit-based selection processes in judicial selection. In an econometric model, a dummy variable is a variable that marks or encodes a particular attribute. A dummy variable has the value zero or one for each observation, e.g. 1 for male and 0 for female. In this instance, the variables were used to record whether a state used a particular selection model or not. It was postulated that the manner of selection may tend to impact wages in that a merit selection process would tend to support higher wages as the candidates may be required to demonstrate a higher level of ability than in other process selection methods.

- Cost of Living Index (COL)

Values from the ACCRA COL Index⁴ were utilized in the modeling process to investigate if higher costs of living created upward pressure on judicial salaries.

- 2009 Total Employed in the Judicial Legal Field Per Capita

It was theorized that additional staffing and assistance for judges in performing their duties as well as limited judiciary budgets for paying salaries may exert a downward pressure on judicial salaries. The data was divided by population to create a per capita figure.

- 2007 Authorized Judges Per Capita

The total of authorized trial judges for all 50 states was included to investigate if having more judges reduced judicial wages. The 2007 data from the National Center for State Courts was the most recent available for all 50 states. The data were divided by population to create a per capita figure.

⁴ C2ER produces the ACCRA Cost of Living Index to provide a useful and reasonably accurate measure to compare cost of living differences among urban areas. Items on which the Index is based have been carefully chosen to reflect the different categories of consumer expenditures. Weights assigned to relative costs are based on government survey data on expenditure patterns for midmanagement households. All items are priced in each place at a specified time and according to standardized specifications.

- 2009 Lawyer Salary

The average salary for lawyers could be used as a factor in setting judicial wages.

- Existence of a Judicial Commission

A dummy variable was created to indicate whether a state utilized a judicial commission in setting judges' wages. It was theorized that such a commission would have a positive effect on the amount of wages being paid as such a commission would be in a position to research the issues involved and have a vested interest in the process.

- Wage Escalator

A dummy variable was created to indicate whether a state allowed for automatic pay raises for its judiciary. It was assumed that such automatic increases would have a positive impact on judges' wages.

- 2008 Violent Crime Rate

The amount of work expected of trial judges, i.e. the caseload before them, has been presented as a factor that should be considered in setting judicial wages. Caseload statistics were not available for all 50 states, therefore two proxy variables were considered – violent crime rate and jury trial rate. Of the two, the violent crime rate worked as a better predictor of wage. A further discussion on the issue of caseload and its effects on wages may be found in the Appendix.

- Region

A dummy variable was created to indicate the region – Northeast, South, Midwest or West – for the state. This was done to investigate whether geographic location impacts the amount of judicial wages paid.

Ideally, fringe benefits would have been included as a variable for consideration as they typically constitute a considerable portion of overall compensation. Unfortunately, no secondary source of quantified fringe benefits data for judges was found for the 50 states, and a comprehensive review and comparison of state judicial compensation packages is beyond the scope and time requirements for the present study.

D. Regression Models

Development of Regression Models

Data for 2009 on trial court judge wages for all 50 states were obtained from the National Center for State Courts. Plotting this data on a scatter diagram indicates that judicial wages are less clustered than might be anticipated given that the parties are assumed to be performing similar duties. See Figure 1 on the next page.

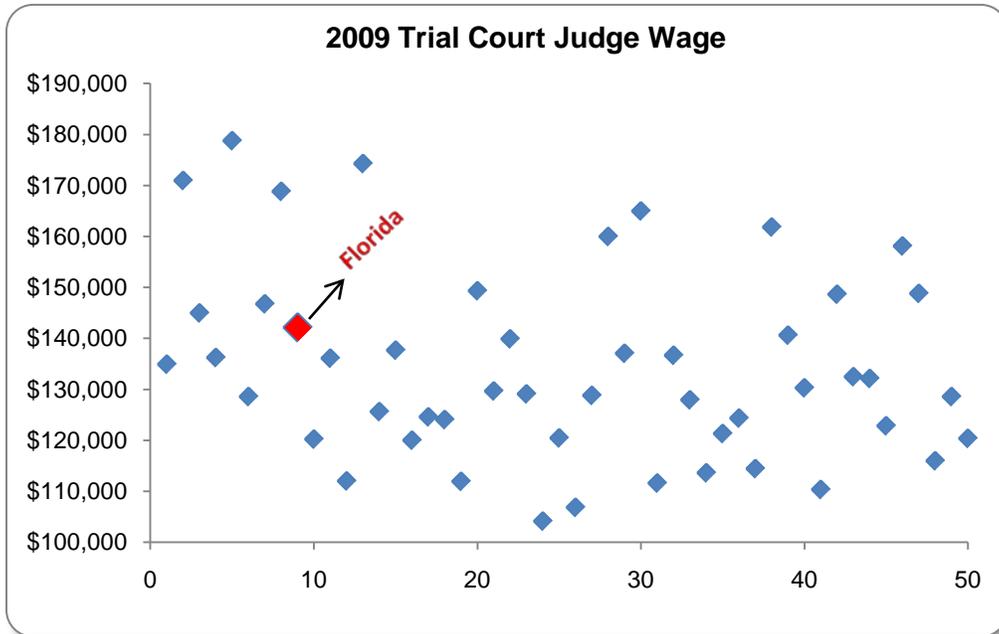


Figure 1
Source: National Center for State Courts.

When a similar scatter diagram is created for the ACCRA Cost-of-Living Index, a comparison shows that wages appear to show more variability than might be explained simply by Cost-of-Living differences among the states or regions.⁵ See Figure 2 on the next page.

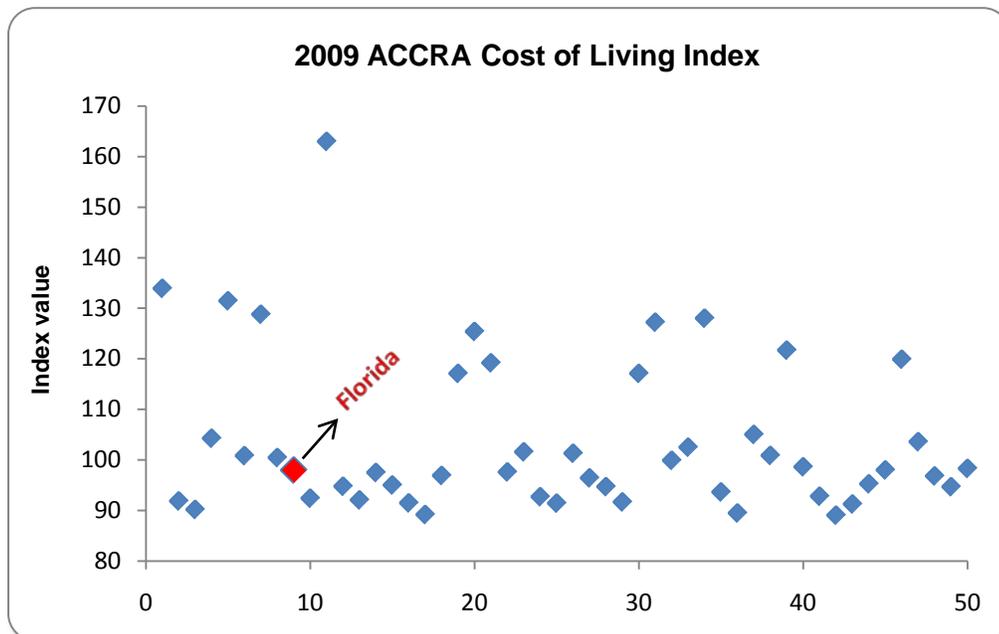


Figure 2
Source: The Council for Community and Economic Research (C2ER).

⁵ The ACCRA Cost of Living Index is published quarterly by C2ER. It ranks the major metropolitan statistical areas (MSA) on the basis of the cost of a market basket of selected goods in that MSA.

Next a simple correlation table was created to examine the relationship between 2009 Trial Court Judge Wages and the different variables that are postulated to have an effect on these wages. A correlation is a single number that describes the degree of relationship between two variables. Table 1 below indicates a high correlation between 2009 wages and the wages paid in 2005. A lesser level of correlation is shown among the wage and lawyers' salaries, population, the existence of a wage escalator and the violent crime rate.

Table 1. Variable Correlation to 2009 Trial Court Judge Wages

Variables	Correlation
2009 Population	41.5%
2005 Trial Court Wage	81.9%
Selection - Appointed	18.8%
Selection - Merit	8.4%
Selection - Election/Retention	-24.1%
Cost of Living Index (COL)	14.4%
2009 Total Employed Per Capita	10.4%
2007 Authorized Judges Per Capita	-34.9%
2009 Lawyer Salary	69.5%
Judicial Commission	13.2%
Escalator	45.7%
2008 Violent Crime rate	41.0%
<u>Region</u>	-9.9%
Northeast	21.7%
South	-9.4%
Midwest	-15.5%
West	5.2%

Source: KaddStat. Haas Center for Business Research and Economic Development.

Correlation between two variables does not automatically imply that one causes the other, although correlation is necessary for causation, and correlation can indicate possible causes or areas for further investigation. With this in mind, the next step taken was to create a simple regression model utilizing the 50-state variable set. The simple model results are shown in Table 2 on the next page.

Table 2. Simple Regression Model

Dependent Variable:	2009 Trial Wage
Independent Variables:	
2009 Population	0.000002 (0.0061)
2005 Trial Court Wage	0.7725 (5.46)
Appointed	-958.92 (-0.25)
Merit	-1356.80 (-0.37)
Election/Retention	-9642.63 (-2.32)
Cost of Living Index (COL)	83.60 (0.82)
2009 Total Employed Per Capita	986350 (0.29)
2007 Authorized Judges Per Capita	-11379238 (-0.34)
2009 Lawyer Salary	0.09 (0.73)
Judicial Commission	-972.72 (-0.34)
Escalator	7659.10 (2.66)
2008 Violent Crime rate	17.37 (1.81)
Region	4864.17 (3.06)
N*	50
Adjusted R2	0.7651
Notes: *N=50, number of data points used to run the Regression Model. t-statistics are in parentheses.	
Source: KaddStat. Haas Center for Business Research and Economic Development.	

This model explained approximately 77 percent of the variability among trial judicial wages in the states when considering the 2009 Trial Court Judge Wages. Variables significant at the one percent level (those with a 2.5 t-statistic or higher) included the 2005 Trial Court Wage and the presence of an automatic wage escalator.

Stepwise Regression Model

In addition to the simple Regression Model, the 50-state variables were also used in a forward stepwise regression model. Forward stepwise regression adds variables to the regression model for the purpose of identifying a useful subset of the predictors. In

addition, a second forward stepwise model was created using the natural log of the 2009 Trial Court Judge Wage. By creating a log of the dependent variable, the coefficients of the independent variables become percentage differentials rather than dollar differentials. This permits interpretation of results as percentage impacts. The results of these models are listed in Table 3 below.

Table 3. Forward Stepwise Models

Dependent Variable:	Forward Stepwise Models	
	2009 Trial Wage	ln (2009 Trial Wage)
Independent Variables:		
2005 Trial Court Wage	0.9335 (11.08)	6.7E-06 (10.73)
Election/Retention	-9349.85 (-3.20)	-0.0673 (-3.09)
Wage Escalator	8305.92 (3.10)	0.05744 (2.88)
Region	5233.12 (4.06)	0.0355 (3.69)
N*	50	50
Adjusted R2	0.7811	0.7686

Notes: *N=50, number of data points used to run the Regression Model.
t-statistics in parentheses. Coefficients are significant at less than 1 percent level.
Source: KaddStat. Haas Center for Business Research and Economic Development.

The results indicated that the variables that are most predictive of trial court judicial wages are (1) what trial court judges have been paid in earlier years; (2) whether trial court judges are selected by election or retained in office by periodic popular vote; (3) whether automatic salary increases are in place; and (4) the geographic location of the state. It is interesting to note that both initial selection and retention of judges by vote of the electorate have a negative impact on judicial wages of over 6 percent or some \$9,350 per year. One explanation for this may be that once an office becomes politicized, it is subject to a higher level of public scrutiny that tends to have a chilling effect on wage levels. Trial court judges typically make significantly more money than the average voter, and the model results suggest that this may tend to act to suppress judicial wages.

It should be noted that while the model utilized trial court judge wages as the dependent variable, the results can be extrapolated to the upper appellate levels of the judiciary, as these salaries tend to be uniformly higher than the trial court judge wage.

E. Comparative Analysis of Selected States

Several comparison states were selected in order to provide context for Florida trial judge wage levels. While judicial candidates may have a limited opportunity to relocate in order to obtain higher paying positions, comparison to compensation packages in other states could be considered in the decision to enter the judiciary or remain in private practice if the state’s package does not meet expectations. The comparison selections were based on comparable size, geographic location and similar court systems. These states are: Alabama, California, Florida, Georgia, Illinois, New Jersey, New York and Pennsylvania. See Figure 3.

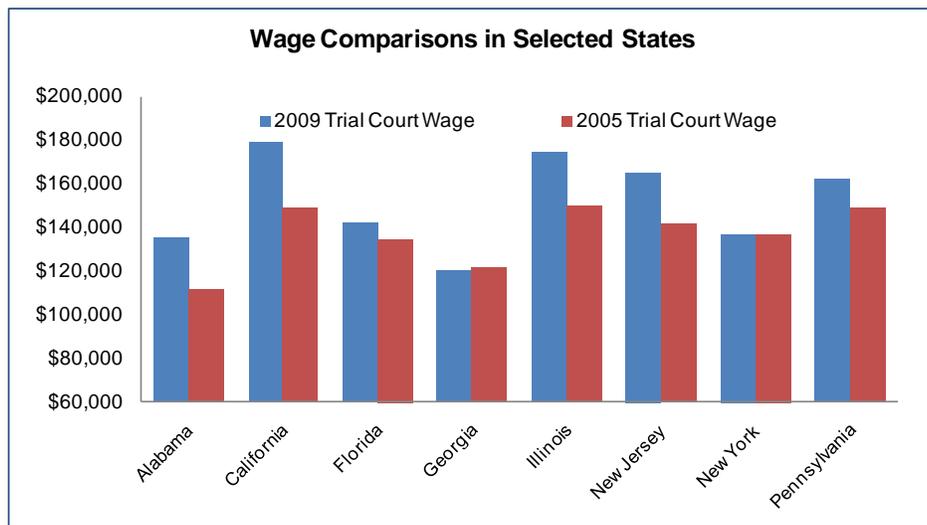


Figure 3
Source: National Center for State Courts.

Annual trial court judge wages in these states in 2009 ranged from a high of \$178,789 in California to a low of \$120,252 in Georgia. Florida’s 2009 trial court judge wage was \$142,178. Wage increases between 2005 and 2009 varied from a high of 20 percent in Alabama to a decrease in wage in Georgia of nearly 1.5 percent.

As part of the comparison analysis, the 50-state simple regression model was rerun adding a dummy variable for each comparison state. This allowed for model results to quantify the impact of state location on the 2009 Trial Court Judge Wage. The results of the modeling, along with other areas of comparison, are included in Table 4 on the following page. **As can be seen, the coefficients from the regression model indicate that wages for Florida trial judges are potentially significantly lower - by nearly \$16,000 - than the 50-state model would predict.** This wage differential is also greater than those of neighboring Georgia and Alabama.

Table 4. State Comparison

State	General Trial Court Judge Wage 2009	Judicial Selection Process	How compensation set	Number of Authorized Judges (2007)	State Population 2009	Number of residents per judge	Annual wage cost per resident per judge	Regression model wage coefficient difference
Alabama	\$134,943	Partisan election; gubernatorial appointment of mid-term vacancies	Judicial compensation commission; recommendations become law unless rejected by legislature	596	4,750,017	7,970	\$16.93	-\$4,740.45
California	\$178,789	Non-partisan election; appointment of Supreme and Superior Court judges	Department of Personnel Administration	2,084	36,622,269	17,573	\$10.17	\$21,596.44
Florida	\$142,178	Appellate judges chosen through merit selection and retention process; trial judges are chosen in non-partisan elections; gubernatorial appointment of mid-term appellate vacancies	Legislative action	935	18,498,110	19,784	\$7.19	-\$15,996.21
Georgia	\$120,252	Non-partisan election; gubernatorial appointment of mid-term vacancies	Judicial compensation commission; advisory only; action required by legislature	1,506	9,740,661	6,468	\$18.59	-\$14,723.56
Illinois	\$174,303	Initially chosen in partisan elections; judges run in uncontested, nonpartisan retention elections to serve additional terms	Judicial compensation commission; recommendations become law unless rejected by legislature	920	12,946,959	14,073	\$12.39	\$12,591.76
New Jersey	\$165,000	The governor, with the approval of the senate, chooses all judges; judges stand for reappointment after seven years in office, once reappointed, they serve until age 70	Judicial compensation commission; advisory only; action required by legislature	815	8,731,495	10,713	\$15.40	\$20,637.33
New York	\$136,700	Trial court judges are chosen in partisan elections; candidates for the supreme court (the major trial court) are chosen through a party convention system	Legislative action	3,593	19,513,577	5,431	\$25.17	-\$11,741.31
Pennsylvania	\$161,850	Partisan elections	Legislative action	1,045	12,614,792	12,072	\$13.41	\$224.38

Source: National Center for State Courts; Allteryx

F. Conclusion

In order for Florida to reach its economic development goals, it must maintain its excellent business climate by recruiting the best judges to administer justice. An analysis of the factors driving judicial wages suggests that while this is an acknowledged goal, factors other than those that might be considered as supporting an excellent judiciary are the drivers behind the setting of judicial wages. The factors that were identified as predictive of judicial salary – previous wages, appearance on the ballot for election or retention, automatic pay increases and geographical region - are not those factors cited by judicial candidates in undertaking this office. However, factors that might be considered relevant by judges and judicial candidates – manner of selection retention, caseload, number of support staff, private-sector attorney wages, etc. – proved in the modeling process to have little or no significance in how judges are compensated.

The main conclusion reached by statistical testing and a comparative analysis from other competing states is that Florida judges are underpaid based on a number of factors analyzed when compared to other state counterparts.

III. SURVEY AND KEY FINDINGS

A. *Survey Background and Summary Results*

In September and October 2010, with the assistance of the Florida Chamber Foundation, The Florida Bar and the Office of the State Courts Administrator, The Washington Economics Group (WEG) conducted two surveys of randomly-selected samples of judges and attorneys throughout the state of Florida. In an effort to address the issues of how best the state can recruit and retain judges to the judiciary, the surveys were prepared and distributed to 1,147 sitting and senior judges and approximately 900 attorneys. The judges surveyed included: Circuit Court, County Court and District Court judges and Supreme Court Justices. WEG received a total of 875 responses, which is a highly satisfactory response rate to reach meaningful conclusions overall, however while the number of responses for judges was satisfactory (779), the number of responses for attorneys alone was not as satisfactory (96).

From the perspective of both judges and attorneys, the survey was a necessary tool to gather the knowledge and information needed to identify key *incentives* and *disincentives* in entering and/or remaining in the judiciary in Florida. Responses to the questions have been aggregated and are discussed in more detail in the following section.

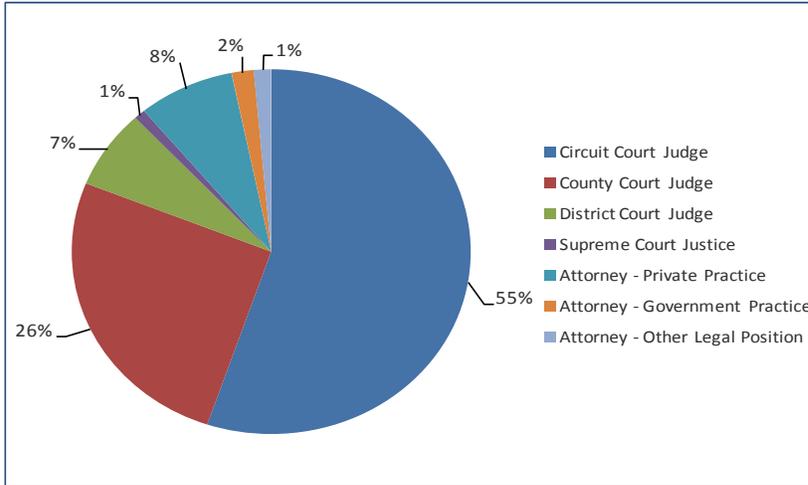
The survey drew many conclusions, but the most commonly cited sentiments among current and prospective judges were the following:

- Attorneys can make more money in private practice so when they leave their practice to become judges, lawyers often take a significant pay cut. The ongoing risk that salaries and benefits may be cut by the Legislature was a common response.
- One advantage to being a judge, among many reported, is the attractive retirement and benefits package offered by the state. This was cited often to make up for the decrease in salary. However, the respondents also mentioned the concern that the interest rates for the DROP program will be decreased from 6.5 percent to 3 percent.
- Many judges surveyed felt as if the courts system is treated like a state agency, and not as a separate and co-equal branch of government.
- Many judges would like the mandatory retirement age moved to 75 from 70, as it currently stands in the Florida Constitution.
- Sitting judges and prospective judges consider elections and having to run for re-election or retention every six years as a potential deterrent to becoming a judge. Also, respondents cited the expense of running a campaign to be high. Qualifying fees are between \$5,000 and \$8,000.

- The most commonly reported incentive or reason to join the judiciary was the commitment to public service and the prestige of the office.

B. Survey Questions, Responses and Analysis of Responses

Question #1.1A for Judges and Lawyers: Please indicate your legal occupation.



As is shown in Figure 4, a much greater number of judges replied to the survey than lawyers. Just 11 percent of respondents were lawyers, while 89 percent of respondents were current judges. This fact makes evident the important issues that currently face the judiciary at all levels. Among judicial respondents, the greatest number of respondents was

Figure 4

Source: The Washington Economics Group (WEG).

Circuit Court Judges followed by County Court Judges. Among attorneys, those in private practice responded at a greater level than attorneys in Government Practice or Other Legal Profession.

Question #1.1B for Judges: How many years have you served as a judge?

Most judges who responded to the survey have served in the judiciary for more than 15 years as is shown in Figure 5. This fact is a testament to the rewarding nature and prestige of the profession. The next two largest groups were those judges who have served 2 to 5 years in the judiciary, followed by those that have served 6 to 10 years – both groups responded at approximately the same frequency.

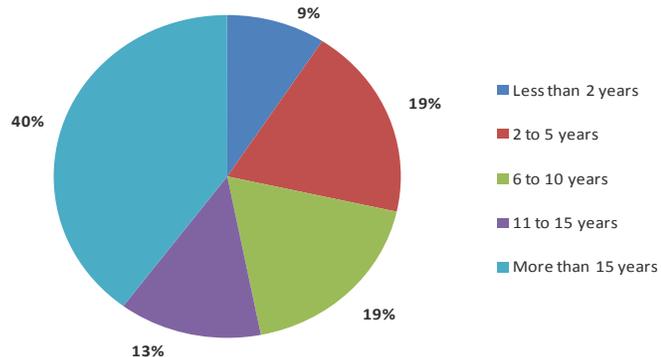


Figure 5

Source: The Washington Economics Group (WEG).

Question #2 for Judges: When you became a judge, was it your intention to continue in that capacity until retirement?

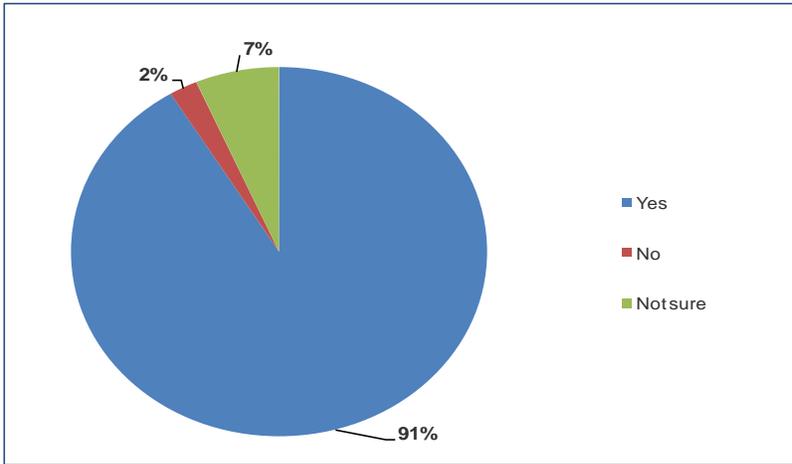


Figure 6
Source: The Washington Economics Group (WEG).

As is displayed in Figure 6, the overwhelming majority of currently sitting judges who responded, 91 percent, said that it was their intention to remain a judge until retirement. Florida’s constitution currently has a mandatory retirement age of 70 for judges. Others, 7 percent, reported that they were and are not sure if they will remain in the judiciary until retirement. Based on

the opinions provided by respondents and discussed in greater detail later in this section, the threat of changing retirement benefits and reductions to salary is the main driver of discontent and uncertainty among sitting judges.

Question #3.3A for Lawyers: How many years have you practiced law?

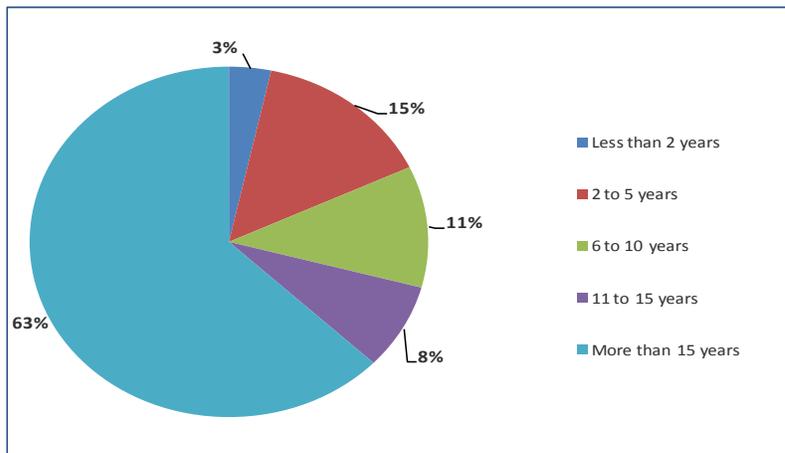


Figure 7
Source: The Washington Economics Group (WEG).

The overwhelming majority, 63 percent, of respondents have practiced law for more than 15 years as is made evident in Figure 7. This group was followed by 15 percent of respondents who reported that they have practiced law for 2 to 5 years.

Question #3.3B: Have you ever considered becoming a judge in the past or believe you might aspire to seek becoming a judge in the future?

This question focused on assessing the interest among current attorneys in becoming a judge. Figure 8 below finds that the majority, 44 percent, have aspired or currently aspire to become a judge leaving their practice of law behind. Thirty-nine percent (39%) of respondents said that they would not leave their law practice to become a judge, while 17 percent reported that they were not sure if they would make such a professional move.

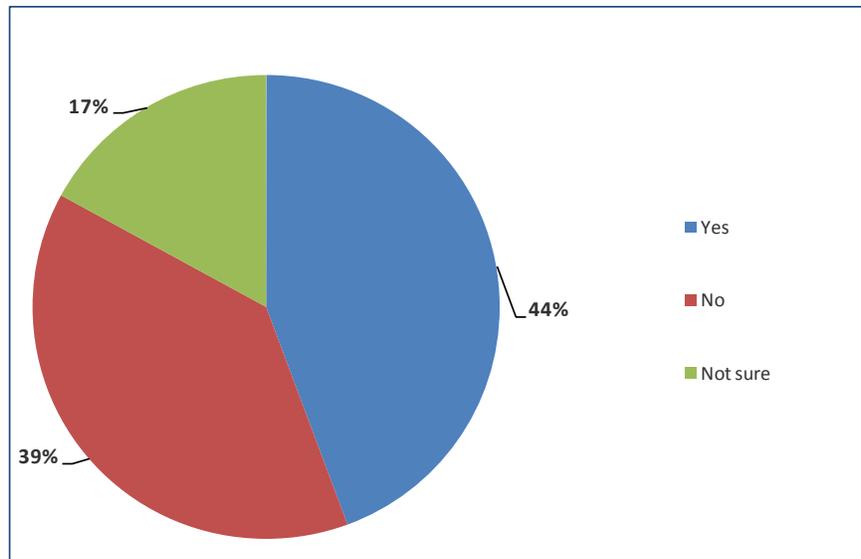


Figure 8
Source: The Washington Economics Group (WEG).

Question #4 for Judges and Lawyers: Please rank order the following five challenges as they pertain to recruiting judges to the Florida State Courts System.

Among the choices given: *Pay*, *Benefits*, *Insufficient Funding from the State*, *Retirement* and *Workload*, the overarching greatest challenge when making the decision to become a judge and/or remain a judge is pay. As illustrated in Figure 9 on the following page, on a 1-5 ranking basis, *Pay* was ranked the #1 most challenging factor in recruiting judges to the state of Florida, and *Workload* was cited as the least challenging, #5, factor in recruiting judges to the state of Florida. Based on the responses to this question, the majority of judges report that they can make a much greater salary in the private practice of law than as a sitting judge. The next biggest concern to this group was the lack of funding of the judiciary from the Legislature. As the Judicial Branch is subject to funding from the Legislature each year, the matter of funding has become a significant issue in light of the recent cuts to the state budget and recession years of late. The opinions and recommendations offered by respondents surrounding these issues will be discussed in greater detail later in this section.

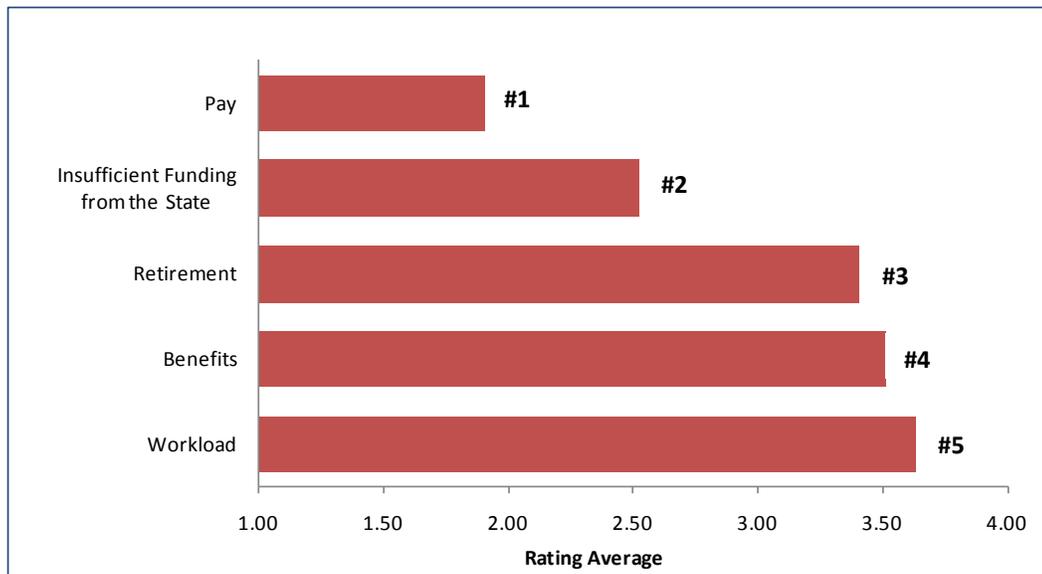


Figure 9
 Notes: #1 is the most challenging factor and #5 is the least challenging factor.
 Source: The Washington Economics Group (WEG).

Question #5 for Judges and Lawyers: How important do you believe the compensation package is (salary plus benefits) in entering or remaining in the judiciary?

The vast majority, 75 percent of respondents to this question rated the importance of compensation (salary plus benefits) as “*Very Important*” in becoming or remaining a judge (Figure 10 below). This sentiment was recorded repeatedly in the responses collected from both judges and attorneys.

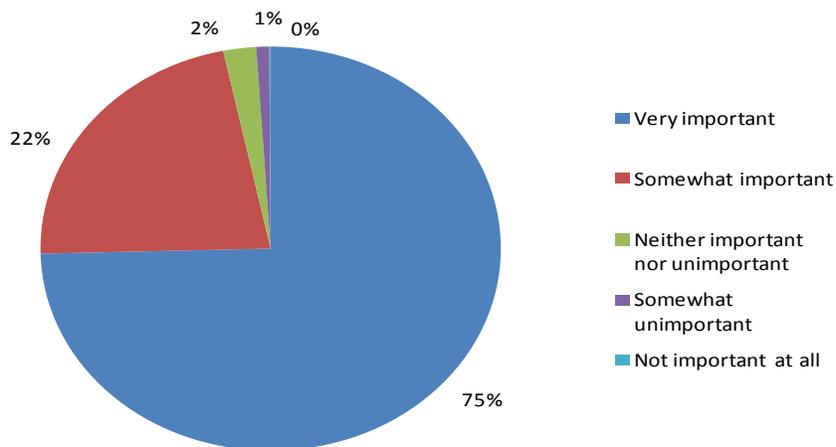


Figure 10
 Source: The Washington Economics Group (WEG).

Question #6 for Judges and Lawyers: On a scale of 1 to 5 with 5 having the MOST influence and 1 having the LEAST influence, how would you rate each of the following policies as being a detriment to your becoming a judge or remaining a judge?

As detailed in Figure 11 below, the biggest detriment to becoming or remaining in the judiciary is the threat of a reduction from the annual retirement accrual rate of 3.3 percent. In the Florida Retirement System (FRS), judges receive 3.3 percent of salary in retirement pay. The possibility that this rate may be reduced by the Legislature in order to meet other budget gaps and balance the state budget is overwhelmingly the greatest concern to sitting judges. The next biggest concern among respondents is if the Deferred Retirement Option Program (DROP) were to be eliminated to those not currently in the program. DROP allows workers to retire, but keep working for another five years. As it stands now, DROP participants can retire and have their FRS benefits accumulate in the FRS Trust Fund, earning interest, while the participant continues to work for an FRS employer for up to 5 years – in this case, the judiciary. DROP accounts earn interest compounded monthly at an annual rate of 6.5 percent. Another risk to the compensation packages of judges is the possibility that the DROP interest will be cut to 3 percent instead of its current rate of 6.5 percent. Following the 2010 Legislative Session, Governor Crist vetoed House Bill 5607 which would have cut DROP interest rates from 6.5 percent to 3 percent for new participants in the program.

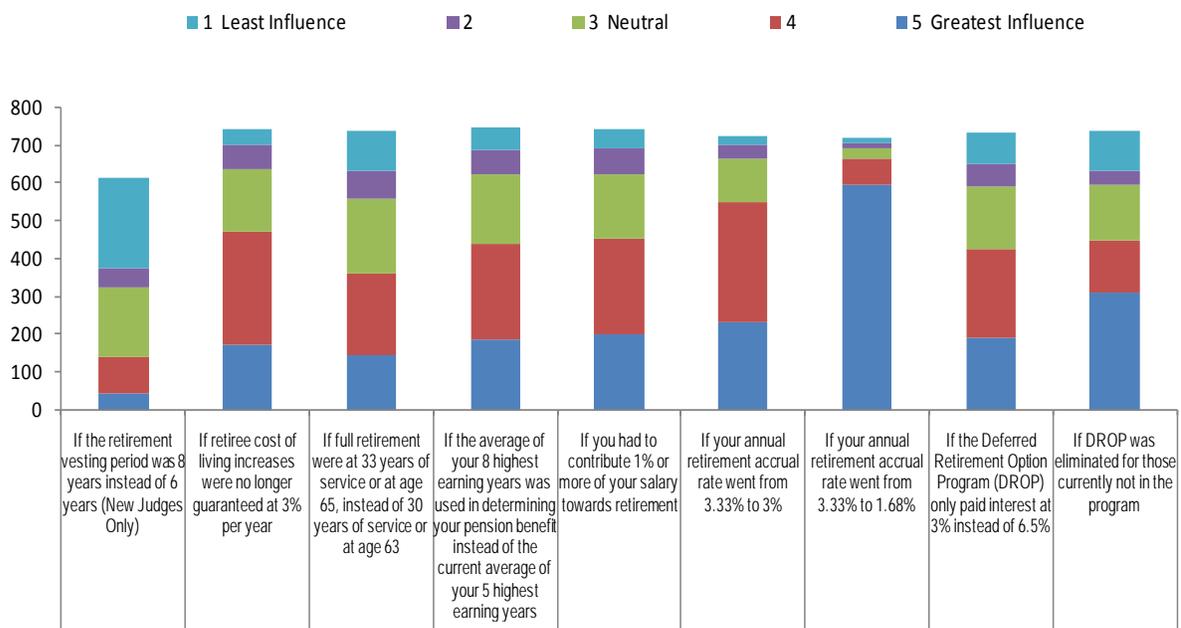


Figure 11
Source: The Washington Economics Group (WEG).

Question #7 for Judges and Lawyers- Write-in question: Please list any other factors that you believe are important in entering or remaining in the judiciary.

Question #7 asked both judges and lawyers to list which factors are important to them in *entering or remaining* in the judiciary. A wide range of factors was listed, but the following were the most commonly reported by the respondents:

- The threat of salary reductions and cuts to the retirement package and benefits,
- The expense, difficulty and frequency of running for re-election,
- Extend the mandatory retirement age to 75. The current mandatory retirement age is 70.

Rising workloads, poor pay for judicial assistants and support personnel, the looming risk of decreases in judicial salaries and changes to the retirement packages were at the forefront of concerns among respondents. As the Judicial Branch is dependent on the Legislature for its annual funding, it is important to note that the majority of respondents cited that if the salaries of judges and their retirement packages and benefits are reduced, it will become much more challenging to attract and retain qualified judges. Additionally, respondents frequently reported that the Judicial Branch is not treated as the separate and equal branch of government that it is, but instead as a state agency- which is it not – subject to yearly reductions in funding. Judges reported that if judicial salaries were more competitive and in line with that of what lawyers in private practice make, judges as a whole would benefit and increase the ability to recruit qualified individuals to the judiciary. Giving up the salary of a lawyer for that of a judge was reported often by respondents as “too great of a sacrifice” to their families.

Regarding the election process, many respondents recommended that Florida constitutionalize merit-based retention throughout all levels of the judiciary, as is done with Appellate Judges. Respondents cited that expenses which include high qualifying costs, between \$5,000 and \$8,000, and the uncertainty and frequency of running for reelection does not serve the best interests of either citizens or judges of Florida.

Question #8 for Judges and Lawyers- Write-in question: What do you feel is the greatest impediment in recruiting and retaining judges in the state of Florida?

The most commonly reported challenge in recruiting and retaining judges in Florida is most certainly the stagnant salary levels and the threat of cuts to retirement benefits. The difference between the salaries of a judge in the state of Florida and the pay that a lawyer in private practice can make is too large for many lawyers to forego. This discrepancy impacts the ability to recruit a highly-qualified and diverse judiciary. A good benefits and retirement package was reported as being able to somewhat make up for the loss in income, however, the ongoing concern that salaries and benefits may be cut by the

Legislature in order to balance the state’s budget is often too great of a risk to make, both personally and professionally.

Question #9 for Judges and Lawyers- Write-in question: What do you find to be key incentives (positives) to entering and/or remaining in the judicial system in the state of Florida?

The most commonly reported and compelling incentive to entering the judiciary is the commitment to public service fulfilled by being a judge. The feeling of “making a difference” was often cited among the respondents along with the prestige of the position as the most rewarding benefits of the judicial profession. Additionally, other reported key incentives to entering or remaining in the judiciary were: manageable working hours, job stability and retirement benefits - as they stand now. The intellectually-challenging nature of judging and personal fulfillment of giving back to the community were frequently cited as important factors as well.

Demographics of Respondents:

Question #10 for Judges and Lawyers: Please indicate your gender.

Sixty-nine percent (69%) of respondents were male, while 31 percent were female.

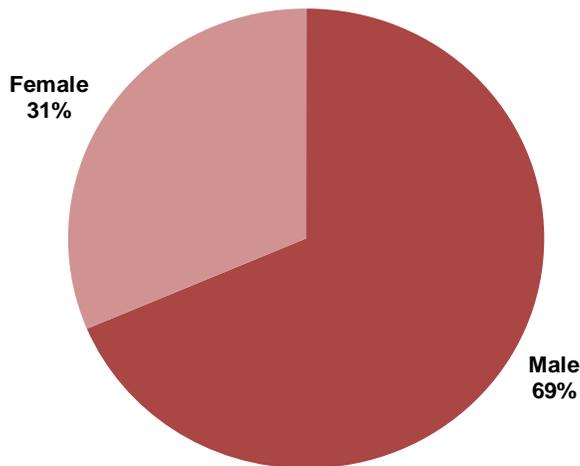


Figure 12
Source: The Washington Economics Group (WEG).

Question #11 for Judges and Lawyers: Which of the following categories includes your age?

Forty six (46) percent of respondents reported their age to be between 55 and 64 years of age followed by 45 to 54 year olds at 28 percent. The smallest fraction of respondents, just 2 percent, reported that they were 35 years old or younger.

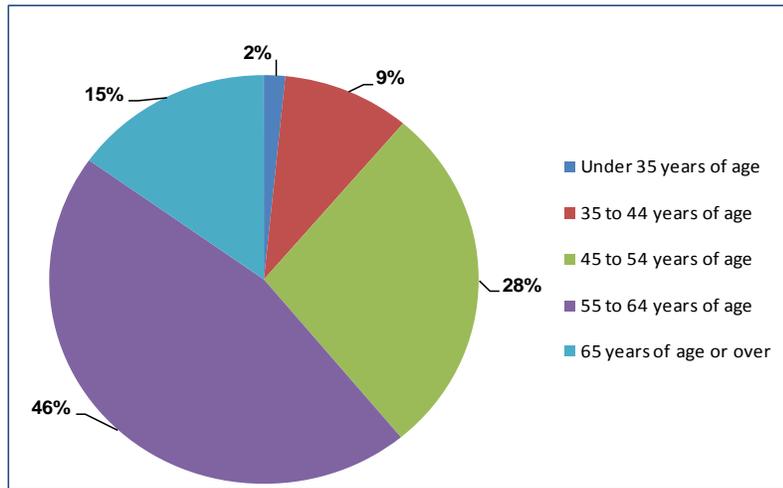


Figure 13
Source: The Washington Economics Group (WEG).

Question #12 for Judges and Lawyers- What is your race?

An overwhelming majority of respondents, over 91 percent, reported their race to be White/Caucasian, followed by 5 percent Black/African American and just over 3 percent reporting a race other than White or Black.

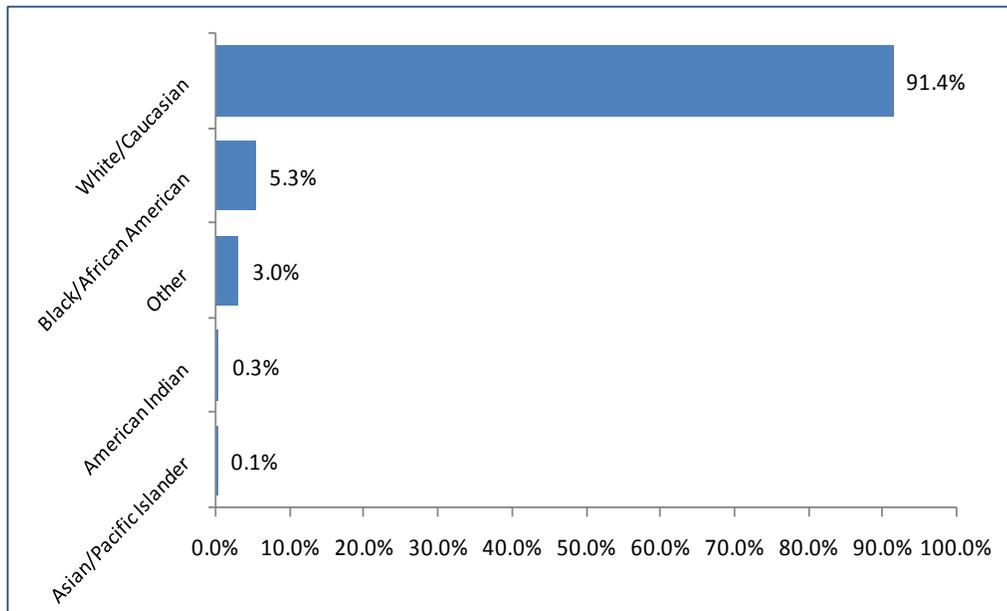


Figure 14
Source: The Washington Economics Group (WEG).

Question #13 for Judges and Lawyers: Are you Hispanic or Latino (A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race)?

Ninety-one percent (91%) of respondents said they were not Hispanic or Latino as is shown in Figure 15 below. Nine percent (9%) of respondents reported their heritage to be Hispanic or Latino.

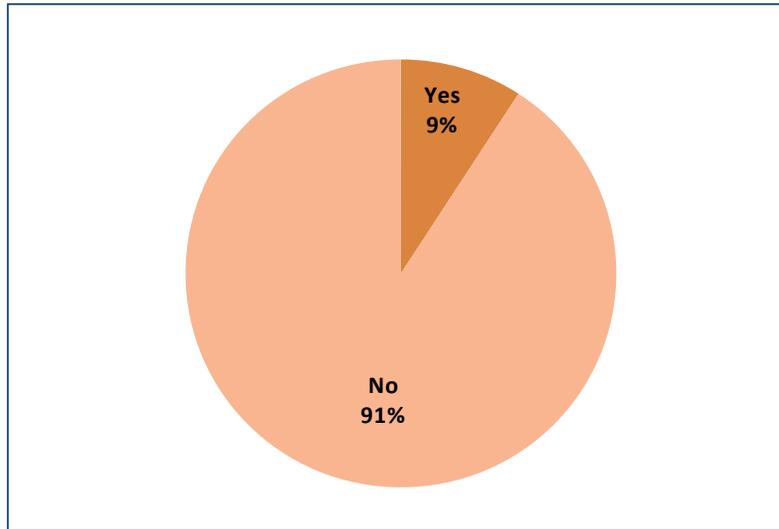


Figure 15
Source: The Washington Economics Group (WEG).

Question #14: Please indicate your total income before taxes.

The majority of respondents, 60 percent, reported having a salary between \$100,000 and \$149,999; followed by 26 percent that reported their salary to be more than \$150,000.

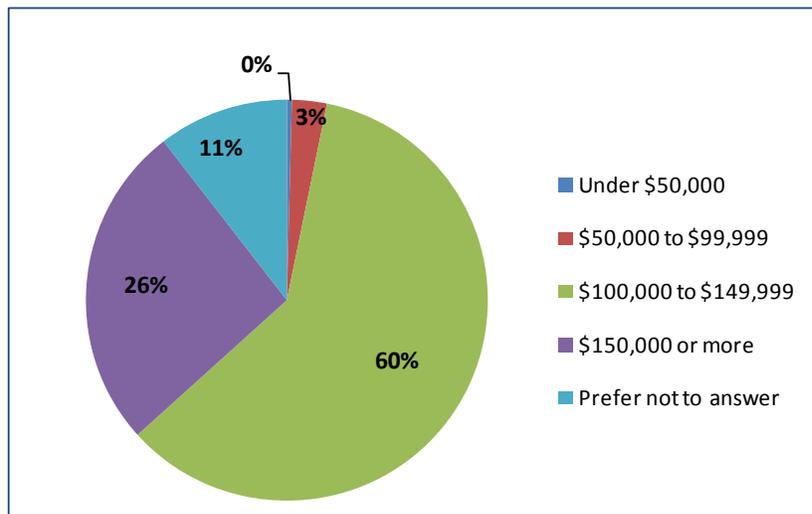


Figure 16
Source: The Washington Economics Group (WEG).

IV. CONCLUSIONS AND POLICY RECOMMENDATIONS

There are a number of conclusions to be drawn from the comprehensive analysis presented in this study. The analysis was based on a 50-state regression model with the predictive ability to determine the factors that impact the salaries of trial judges. One shortcoming of the model was that fringe benefit data were not available and therefore, were not included as a variable in the analysis. The statistical testing and analysis of trial judges' salaries concluded that judicial wages are nearly \$16,000 lower than the 50-state model would predict. The analysis also points to a disconnect between the factors considered in setting judicial wages and the factors cited as important to those individuals considering entry into or currently in the judiciary. For example, while caseload is cited as an important factor by survey respondents, the model reflected that it was not an important factor to wage setters. The variables that were most indicative of wage values - prior salaries, election as a selection process, automatic salary increases and geography - were not those considered by judges and judicial candidates as important.

Responses to the survey indicate that the main factor deterring experienced attorneys from becoming judges is "pay" and the relatively higher wages that can be derived in private practice. Another challenge facing the judiciary is the underfunding of the court system by the Legislature, which also results in growing caseloads. Additionally, experienced lawyers are hesitant to join the judiciary due to the uncertainties of each legislative session, where judges' benefits are subject to change to meet the budgeting needs of the state.

Future research could examine the relationship between the factors that were found to be significant in setting total compensation packages and the factors that were reported as important by sitting and prospective judges to eliminate the disconnect. This research could provide a more in-depth survey of attorneys that would be a useful tool in determining the key incentives and disincentives among that specific population in entering the judiciary. Such a survey could include a breakdown and ranking of such factors as salary, benefits, caseload, and monetary and non-monetary factors in order to analyze and determine potential trade-offs given state budgetary issues.

Based on the findings of the study, several policy recommendations can be drawn. It is recommended that judges' salaries be brought to levels that reduce the gap with other states and to the extent possible, with similar positions of seniority in the private practice. It is also recommended that investing in the judicial system be considered an economic development foundation of the state. The efficient and prompt adjudication of commercial disputes is critical to the business climate of Florida. Adequate funding of the judicial system would improve the ability of the state to attract, expand and retain high-skill, high-wage

jobs. While the investment in the judicial system is key in the economic development future of the state, the implications of the current budget situation must be strongly considered. Funding mechanisms such as creating a specific Trust Fund with dedicated funding for the judiciary would have a stabilizing effect over the long-term. This would avoid the uncertainty in the benefit packages for judges during each legislative session. Certainty and continuity in benefits for judges are critical to attract experienced and qualified attorneys to the judicial system.