

**REPORT TO THE DELAWARE COMPENSATION COMMISSION**

**Delaware State Bar Association  
Committee on Judicial Compensation**

**December 11, 2012**

## TABLE OF CONTENTS

A.	Executive Summary .....	2
B.	Background .....	10
C.	Preeminent Role of Delaware Judiciary .....	13
D.	Comparisons with Other States .....	21
E.	Recommendations.....	26
F.	Conclusion .....	29
G.	Attachments:	
	A. National Center for State Courts Survey of Judicial Salaries as of January 2, 2012	
	B. Statistical Summary and Overview - Supreme Court	
	C. Statistical Summary and Overview - Court of Chancery	
	D. Statistical Summary and Overview - Superior Court	
	E. Statistical Summary and Overview - Family Court	
	F. Statistical Summary and Overview - Court of Common Pleas	
	G. Statistical Summary and Overview - Justice of the Peace Courts	

*A. Executive Summary*

The Delaware Compensation Commission (“Commission”) is charged by statute with the responsibility for recommending the level of compensation for various public officials in all three branches of State government on a quadrennial basis. The Report of the Compensation Commission becomes the basis for compensation unless rejected by the Legislature within thirty days following the commencement of the legislative session. Paraphrasing prior Commission Reports, the function of the Commission is to assure that compensation levels are not inadequate in Delaware from a national, regional, local, and marketplace perspective. One of the driving forces supporting the importance of the Commission’s Report is the need to attract and retain highly qualified public officials. The Delaware Judiciary comprises approximately two-thirds of all persons affected by the Commission’s work.

The Judiciary in Delaware continues to play a unique and expanding role of a national and international importance. In the commercial world, major corporations rely on the quality, consistency and speed with which the Delaware Supreme Court, Court of Chancery and Superior Court render decisions that affect corporate governance, stockholders’ rights and the business marketplace in the United States and the world. In this capacity of domestic and international leadership, the Delaware Judiciary has been the keystone of corporate law for more than a century and is widely recognized as the nation’s preeminent forum for the determination of disputes involving the internal affairs of more than 850,000 Delaware corporations and other business entities through which a vast amount of the world’s commercial affairs are conducted. The confidence of 63% of the Fortune 500 companies is firmly rooted in the quality of the Delaware Judiciary. Delaware is home to more than half of all U.S. firms trading on the NYSE and

NASDAQ. The reward for the State of Delaware from the Court system is the annual taxes, fees and abandoned property from business entities registered in Delaware paid to the State, as well as the substantial economic activity generated by those in the private sector who represent Delaware business entities. The current FY2013 is based on income from corporate, LLC, business entities and UCC filings totaling \$798.2 million, exclusive of corporate income taxes. These amounts represent 22% of the State Operating Budget. Abandoned property of business entities registered in Delaware is budgeted at \$484 million to the Division of Revenue, representing an additional 14% contribution to the State Operating Budget attributable to Delaware business entities. Additionally, the Delaware Court System makes significant annual contributions in excess of \$25 million through filing fees, cost payments and assessments paid by litigants.

Of equal importance are the “people’s courts” of Delaware which render justice to the great majority of the citizens of the State. Currently the Family Court, Court of Common Pleas and Justice of the Peace Courts collectively handled 505,392 filings in 2011. This represents 95% of the total caseload of all of the Delaware Courts. The quality of the judges, commissioners and magistrates in these courts is of no less importance to the citizens of the State than those who serve the justice needs of the nation and the world. The personal health and welfare of Delaware’s citizens depends upon and deserves the high quality of justice administered by these critical courts and their judicial officers.

Due to the emergency situation impacting the national, state, and local economic climate, the 2009 Compensation Commission was unable to make recommendations on adjustments for the last four years. The 2005 Compensation Commission, in setting

judicial compensation levels favorably received the Delaware State Bar Association's recommended approach for evaluating the status of compensation of the Delaware judiciary. As in 2005, given the commercial importance of the Delaware Court system, it is appropriate to compare Delaware to those states that attempt to compete with Delaware as national and international business centers, namely California, Illinois, New York, New Jersey, Florida and Georgia ("Competitive Commercial Litigation Jurisdictions" or "Commercial Jurisdictions"). This comparative approach served the last three Commissions well as Delaware not only maintained, but also further enhanced its recognition across the nation as a model judiciary.

Additionally, in past years the Commission has inquired of the Delaware State Bar Association representatives about employing a percentage scale to set levels of compensation within the judicial branch. This report employs the methodology used by the 2005 Compensation Commission setting the Supreme Court compensation at the average of the top two commercial states as the basis with percentage supplements for the chief judicial officer of each court. Percentages are applied against the highest court to establish a recommended level for the trial courts from which direct appeal is taken to the Supreme Court. Similarly, a percentage is applied to those courts from which appeals are taken to other trial courts.

Delaware's status as a national leader in all areas of the justice system should be reflected in the compensation awarded to its judges. Judicial compensation in Delaware needs to be adjusted to appropriately reflect the status and stature of the Delaware judicial system and to take into account the fact that the members of the Delaware Judiciary have sacrificed and continue to sacrifice the opportunity to pursue economically lucrative

careers in the private sector. The Delaware State Bar Association recommends that the 2013 Commission Report once again employ the average of the top two Commercial Jurisdictions as the benchmark for the Delaware Supreme Court and, in 2013, employ a percentage approach to recommend compensation for each of the trial court judges, chief judges, commissioners, and magistrates to ensure that our justice system remains a leader across the nation.

The inherent difficulty in a quadrennial review is to find a common point for comparison as the States adjust salaries on different cycles. The most recent study of all States' judicial salaries with a common base is the July 2012 report from the National Center for State Courts (see Attachment A). Using this report as a baseline to derive the average compensation of the top two Commercial Jurisdictions for their highest courts and separately for their trial courts of general jurisdiction, Delaware can establish a reliable basis for equitable salary levels for all of its courts over the next four years. The salary levels recommended for Supreme Court Justices based upon the average salaries of justices on the highest courts of top two Commercial Jurisdiction States and applying the current Delaware average of 5% supplement for the chief judge of each court are:

DELAWARE SUPREME COURT

Chief Justice	\$ 224,533
Supreme Court Justices	\$ 213,814

The Court of Chancery, Superior Court, and Family Court are the three Delaware courts from which appeal is taken directly to the Supreme Court. Delaware, in this regard differs from other states within the Commercial Jurisdiction comparison states, as well as most states in the country, as there is no intermediate court of appeals. Presently, these three courts are compensated at 95% of the level of the Supreme Court. Continuing the 95% level approach and a 5% supplement for the chief judge, results in the salary recommendations for the Court of Chancery, Superior Court, and Family Court:

COURT OF CHANCERY/SUPERIOR COURT/FAMILY COURT

Chancellor/President Judge/Chief Judge	\$ 213,306
Vice Chancellors/Judges	\$ 203,148

The Court of Common Pleas handled 117,253 cases in 2011. Appeal from all Court of Common Pleas cases are taken to the Superior Court. Continuing the 95% level approach and the 5% supplement for the chief judge, results in the salary recommendations for the Court of Common Pleas:

COURT OF COMMON PLEAS

Chief Judges	\$ 202,648
Judges	\$ 192,991

Statistics on salary levels for Commissioners are not comparable to Delaware Commissioners largely due to the higher qualifications and standards in Delaware. Past approaches have been largely unsuccessful in reaching an adequate schedule of compensation such that the commissioners in Delaware presently receive less

compensation that the State attorneys that appear before them. Appeals from commissioners' decisions are taken to the judges in the same court in which the commissioner serves. This report recommends, for the current Compensation Commission's term, setting the compensation for commissioners at 65% of a judge of the same court for 2014, and increasing the percentage by 2% in each the next three years. While the most comparable rate in a national review would be 75%, the recommended 65% in this report will bring the commissioners to parity with the midpoint of Level V Deputy Attorney General and Public Defender. Subsequent Commissions should consider an additional increases in the percentage applied to more adequately compensate these important judicial officers. The recommendation with respect to the Commissioners and Masters in Chancery is that salaries be set at 65% of the level of the judges of the same court for 2014, and increasing the percentage by 2% in each of the next three years. resulting in the following salary levels for 2014:

**COMMISSIONERS**

(Superior Court, Family Court, Court of Common Pleas, and Masters in Chancery)

Master in Chancery	\$ 132,047
Superior and Family Court Commissioner	\$ 132,047
Court of Common Pleas Commissioner	\$ 125,444

Percentage methodology can be applied to the Chief Magistrate of the Justice of the Peace Courts and the Justices of the Peace in a similar manner. Appeals from

decisions in the Justice of the Peace Court are taken to the Court of Common Pleas. The current compensation for a Level III Magistrate is 45% of the compensation of a Court of Common Pleas judge. The Chief Magistrate should receive 75% of the compensation of a Court of Common Pleas judge. Such an adjustment would yield the following:

JUSTICES OF THE PEACE

Chief Magistrate	\$ 144,743
Level III	\$ 86,846
Level II	\$ 84,846
Level I	\$ 81,846

Since the 1996 Commission Report, judges have received annual increases when afforded all State employees. Such incremental increases have allowed Delaware to reduce the loss in salaries compared to other state jurisdictions over the four-year period. However, in the most recent four-year period (2009-2012), the economic climate has largely prevented the incremental adjustments that mitigate the difference in compensation levels with comparison states in intervening years.

Ideally, the Compensation Commission should have to make minor adjustments at the end of each quadrennial cycle to realign Delaware with the other comparable jurisdictions. In order to make this possible, it is desirable to maintain the annual incremental increases afforded to all State employees on an annual basis into the future so that the Delaware Judiciary does not experience slippage during the ensuing four years.

The standing of the Delaware Courts in the legal community, the large percentage of State revenues (36%) generated based on the Judiciary's stability, and the significance of the courts to the citizens of Delaware argue strongly for the recommended increases in

the compensation levels for the judges in all of the Courts. The Delaware State Bar Association Committee on Judicial Compensation recommends that the Compensation Commission ensure that the Delaware Courts maintain their proper status and proposes salary levels commensurate with the national and international status of the Courts that ensure that the personal, corporate, and financial health of Delawareans will be maintained.

## **B. BACKGROUND**

The Delaware Compensation Commission ("Commission") is authorized by Chapter 33, Title 29 of the Delaware Code, and is charged with the duty to

"...make a study of the salaries, emoluments, mileage, per diem, travel and other expense allowances and reimbursements ... of the members of the General Assembly, the Governor, members of the Governor's cabinet, the Lieutenant Governor, the State Auditor, the State Treasurer, the Attorney General, the Insurance Commissioner, the Justice of the Supreme Court, the Chancellor and Vice Chancellors of the Court of Chancery and all judges, associate judges and court commissioners of the Superior Court, the Court of Common Pleas and the Family Court, the Chief Magistrate, and justices of the peace and the Public Defender."

29 Del. C. § 3303(a).

The historical function of the Commission is to assure that compensation levels are not inadequate in Delaware from a national, regional, local, and marketplace perspective. One of the driving forces supporting the importance of the Commission's Report is the need to attract and retain highly qualified public officials. Although the Commission's recommendations focus on public officials from all three branches of government, the majority of the Commission's charge centers on the 137 justices, judges, commissioners and magistrates of the Delaware Judiciary.

The Report of the Compensation Commission becomes the basis for compensation unless rejected by the Legislature within thirty days following the commencement of the legislative session. 29 Del. C. § 3304. Past Commission reports have been enacted with the notable exceptions of the 1993 and 2009 Reports that nevertheless resulted in appropriate increases in compensation for the Judiciary outside the Commission process. In 2011, House Bill No. 159 introduced changes to the Delaware Compensation Commission. While the legislation was not enacted, it indicates

that a methodological approach to setting compensation is highly desirable. In response to the apparent desire for change, this report modified both the group of comparison states and proposes specific percentages to employ in setting levels for the various courts and judicial officers.

Over the twenty-seven years of the Commission's existence, compensation for public officials has been subject to an objective review on a quadrennial basis. This review has been successful in reestablishing compensation levels consistent with the marketplace, comparable states, and Delaware's financial health. The recommendations of the Commission are essential to ensuring that the compensation level for public officials (and most notably for judges) remains appropriate with respect to comparable states in the interim between Commission reviews. The annual incremental increase afforded to all state employees has been applied traditionally to public officials, thereby reducing the comparative decline in compensation for these critical positions. These annual incremental increases have enabled the Commission to "fine tune" compensation levels every four years rather than having to recommend increases that would dramatically affect Delaware's fiscal year budgets. The flagging economic environment since the last Commission report has resulted in erosion of the compensation level of the Delaware judicial branch in comparison to the other States. In the most recent four-year period (2009-2012), the economic climate has largely prevented the incremental adjustments that mitigate the difference in compensation levels with comparison states in intervening years. Adjustment at the present time with the proposed methodology is essential simply to return Delaware to its position at the time of the last report.

Since 2001, The Delaware State Bar Association Committee on Judicial Compensation's recommendations has employed a methodology based on comparisons to states with comparable judicial jurisdictions based on marketplace dynamics which have direct bearing on recruitment and retention of the highest quality judges for each court in Delaware. This report employs the methodology used by the 2005 Compensation Commission setting the Supreme Court compensation at the average of the top two commercial states as the basis with percentage supplements for the chief judicial officer of each court. Percentages are applied against the highest court to establish a recommended level for the trial courts from which direct appeal is taken to the Supreme Court. Similarly, a percentage is applied to those courts from which appeals are taken to other trial courts.

The 2013 Delaware State Bar Association Committee on Judicial Compensation report builds upon the work and precedent of the last two Compensation Commissions to recommend levels of compensation that maintain the status quo for Delaware courts in relation to the comparable courts in comparable states.

### *C. Preeminence of Delaware Judiciary*

The Delaware Courts were ranked first in the nation by the United States Chamber of Commerce and the Institute for Legal Reform for each of the seven years of that organization's surveys. Delaware has consistently topped the list as the best system for overall treatment of tort and contract litigation; having and enforcing meaningful venue requirements; treatment of class action suits and mass consolidation suits; punitive damages; timeliness of summary judgment or dismissals; and discovery matters. Most importantly, Delaware is the most respected state in the nation in the key areas of Judges' Impartiality and Judges' Competence. This recurring recognition continues the longstanding status of Delaware as having the predominant business courts in the nation for the last two centuries.

In addition to the ranking of the Delaware Judicial Branch as a whole, individual judges have garnered national recognition. Chief Justice Myron T. Steele and Chancellor Leo E. Strine, Jr. have consistently been named to the 100 most influential individuals and institutions that shape boardrooms in America.

The Court of Chancery as the court of equity, the Superior Court as the court of law, and the Supreme Court as the court of last resort have placed the Delaware Courts in a unique role as a national and international entity. In this capacity of domestic and international leadership, the Delaware Judiciary has been the keystone of corporate law in the last century.

The Court of Chancery over the last two centuries has been the forum for the major corporate decisions affecting the economic health of business entities. The 850,000 corporations and other business entities domiciled in Delaware include 63% of

the Fortune 500 companies and 50% of the corporations listed on the New York Stock Exchange and NASDAQ. The growing strength of Delaware's national reputation is evidenced by ever-increasing percentage of Fortune 500 companies incorporated in Delaware. The reward for the State of Delaware from the Court system is the annual taxes, fees and abandoned property from business entities registered in Delaware paid to the State. The current FY2013 is based on income from corporate, LLC, business entities and UCC filings totaling \$798.2 million, exclusive of corporate income taxes. These amounts represent 22% of the State Operating Budget. Abandoned property of business entities registered in Delaware is budgeted at \$484 million to the Division of Revenue, representing an additional 14% contribution to the State Operating Budget attributable to Delaware business entities. Additionally, the Delaware Court System makes significant annual contributions in excess of \$25 million through filing fees, cost payments and assessments paid by litigants.

The Delaware Supreme Court leads the Delaware judiciary, strengthening and enhancing the reputation of excellence of the Court of Chancery, Superior Court, and Family Court through its swift review and consistent interpretation of Delaware law and rulings in direct appeals from these courts. Strict internal guidelines for hearing and deciding appeals from all of the Courts provide the corporate and personal worlds with confidence that disputes will be resolved quickly with minimum impact on corporate operations and its citizens' lives.

The Court of Chancery is a state treasure and a national ideal. Its members have the responsibility to issue more formal opinions each year than state and federal appellate courts. That duty is made all the more challenging due to the complexity of the court's

caseload and the regular burden to turn out opinions within days in high-profiled, expedited corporate matters. As important, trends in commercial litigation have increased the mix of the Court's caseload that consists of trials, increasing the difficulty for the judges of balancing their opinion-writing and trial responsibilities.

Although elite in corporate stature, the Court of Chancery serves the ordinary citizen with equal diligence and care, yearly handling thousands of important equity matters - such as guardianships, will contests, property disputes, and expedited requests for injunctions - on top of its corporate and commercial caseload. In sum, Chancery judges must produce opinions of the quality and quantity of a federal appeals court while handling a demanding caseload comprised of complex cases and a high-volume of smaller matters, and continues to do so with a dispatch and with a commitment to quality that is unparalleled by any comparison court, state or federal.

The Superior Court of Delaware plays an equally important role in the external operations of corporations and has earned its national reputation for the efficient handling of complex litigation. Judge William C. Carpenter, Jr. was elected Chair of the National Conference of State Trial Judges by the delegates to that Conference from across the United States. The handling of complex litigation on a special docket was a model for the nation and inspired similar processing across the country.

Each of these business courts has a reputation of individual as well as collective excellence. Competing states are modeling their business courts after the Court of Chancery. The Chancellor is routinely requested to provide technical assistance to other states interested in mimicking the Court of Chancery. The Superior Court of Delaware has received national acclaim for its handling of complex litigation. Notably, the

Superior Court and the Supreme Court must combine their responsibilities as business courts with their critical role as the courts that handle felony criminal cases - a responsibility of the utmost importance in maintaining our citizen's sense of security and in protecting the legitimate rights of criminal defendants.

Every Delaware judge values greatly the Delaware Judiciary's position of prominence and willingly accepts the responsibility that such standing requires. Justices of the Delaware Supreme Court continue a legacy of national leadership. During the last three years, the Chief Justice has served a three-year term on the Board of Directors of the Conference of Chief Justices, most recently as the chair of the Conference, and was appointed to the Federal Judicial Conference's Committee on Federal-State Jurisdiction by United States Supreme Court Chief Justice Roberts. A current Justice served as the president of the American Inns of Court. The international prowess of the Court is evidenced by the naming of a Delaware Justice to the prestigious and centuries-old lawyer organization Lincoln's Inn in England as only the third American judge to recently receive this prestigious award. The other two are United States Supreme Court justices. The current Chief Justice, Justices of the Supreme Court, the Chancellor, and Vice Chancellors regularly respond to invitations to speak at high profile shareholder, corporate counsel and business leaders' meetings throughout the United States and internationally, all the while maintaining the rigorous standards for case management. The Chief Justice alone, by way of example, has appeared and delivered remarks in London at the International Bar Association's Annual Meeting and at a joint meeting of scholars from the London School of Economics and New York University; in Dallas at Southern Methodist's Corporate Law Symposium; in New Orleans at the Mid Year Meeting of the Negotiated Acquisitions Committee of the ABA; and, in Washington,

D.C. at the joint meeting of the Securities Litigation and Business and Corporate Litigation Committee of the ABA. Other members of our business courts regularly attend similar meetings and present papers or talks before national and international corporate and business decision makers, a process which both promotes our law and courts and exposes our judges to real-world issues affecting business litigation.

Of equal importance as courts of corporate and fiscal significance are the “people’s courts” of Delaware which render justice to the great majority of the citizens of the State. Currently the Family Court, Court of Common Pleas and Justice of the Peace Courts collectively handled 505,392 filings in 2011, representing 95% of the total caseload of all of the Delaware Courts. The quality of the judges, commissioners and magistrates in these courts is of equal importance to the citizens of the State as the “corporate courts” are to the corporate citizens in serving the justice needs of the nation and the world.

These personal matters comprise the heart and soul of Delaware families at the most difficult times of their lives and are the matters most critical to the personal health of our State. The cases cover the life and death of Delaware citizens from the newborn to the aged. The dissolution of marriage, domestic violence, child abuse and neglect, termination of parental rights, drug and alcohol abuse, tragic personal injury, housing, welfare, and child support are but a sampling of the matters that the judges, commissioners, and magistrates decide on a daily basis. To the average Delaware citizen, the ability to provide for their daily needs is significantly more important than the extent of disclosure in a proxy statement. Our government exists to serve our citizens, and they deserve the same quality of justice as the corporations that enable Delaware to thrive.

The collective and individual excellence of these courts is equal in prominence to that of the business courts. The Family Court of the State of Delaware is the leading family court in the nation. Only one of three unified family court systems, Delaware has been touted as a model by the American Bar Association, National Council of Juvenile and Family Court Judges, National Center for State Courts, State Justice Institute and the Association of Family and Conciliation Courts. The Family Court regularly serves as a study site and pilot for programs of national importance including the frequently cited Family Court Performance Standards and Measures, programs for the self-represented litigant, full faith and credit for domestic violence protection orders, and alternative dispute resolution programs. Individual judges have received national recognition, and have served as trustees of national organizations including the National Council of Juvenile and Family Court Judges. In the intervening years since the last Compensation Commission report, the Family Court of the State of Delaware has implemented the Delaware Girls' Initiative, and the Juvenile Detention Alternatives Initiative sponsored by the national Annie E. Casey Foundation. Delaware Family Court's initiatives have been cited in the annual reports of the Federal Advisory Committee on Juvenile Justice over the last six years.

The Court of Common Pleas' attention to efficiency has maintained the court's reputation for excellence in conducting its affairs, most notably in its success in collection of fines, costs and restitution. Along with the Justice of the Peace Courts, the Court of Common Pleas has implemented an electronic filing and docketing system providing Delaware litigants with increased service.

The Justice of the Peace Court, through its 60 magistrates in 15 courts, serves as the gateway to justice for the majority of citizens, with a broad jurisdiction affecting the daily lives of Delawareans. The Justice of the Peace Court has led the way in a problem-solving approach to truancy and in the development of unique programs and processes that improve service to the public and provide system-wide cost savings.

The Delaware Judiciary's efficiency is most notable in comparison with other states. Employing a two-tiered system of appellate and trial courts, Delaware has avoided the need for intermediate appellate courts that increase costs to the State and decrease the speed at which cases can be resolved. In contrast to many other states, Delaware assigns appellate responsibility to each court in varying degrees. The Superior Court, Court of Chancery and the Family Court all have appellate functions under the Administrative Procedures Act, as well as handling appeals from other administrative boards including, but not limited to, the Public Employee Relations Board, Board of Pension Trustees, and Unemployment Insurance Appeals Board.

The Court of Common Pleas has appellate jurisdiction through *de novo* trial appeals from cases originating in the Justice of the Peace Courts. Three-judge panels in the Justice of the Peace Courts handle appeals in landlord-tenant actions. Sharing of these appellate responsibilities permits the Supreme Court to review decisions with finality in a swift manner.

The use of Commissioners has increased the efficiency of all of the Delaware trial courts immeasurably. Court Commissioners are assigned high volume and expedited cases providing access to the courts in unprecedented time. This highly trained group of judicial officers serves the trial courts in disposing of routine matters, thereby freeing the

judges of their respective courts to grapple with more difficult and complex legal matters. Appeals from Commissioners are taken to the judges of the court providing quick resolution of disputed results. Fewer than 3% of Commissioners' orders are appealed to judges with an insignificant number of the cases being reversed upon review. Delaware Commissioners differ significantly from counterparts in other states not only in the importance of cases assigned, but also in the appointment process that requires nomination by the Governor and approval by the Senate. The burden of volumes of filings in each court is manageable only in concert with the expert work of Commissioners.

The expansive use of alternative dispute resolution techniques in the Delaware trial courts has enabled the courts to deal with the high volume of cases in an expeditious manner. Mediation and arbitration are employed in these courts with great success. By way of example, mediation has been used in the Family Court for a quarter-century and resolves nearly three-quarters of the cases referred to court-employed mediators. Mandatory alternative dispute resolution in the Superior Court has allowed litigants to settle their claims in short order with reduced legal fees. Mediation in the Court of Chancery and Court of Common Pleas is used regularly to narrow, focus and resolve issues short of trial with remarkable results.

The financial and personal health of the State are highly dependent upon the individual and collective Delaware Courts, each of which has earned its position of prominence to form an efficient and effective system recognized as the finest in the country.

#### ***D. Comparisons with Other States***

In setting judicial compensation levels, the early Commissions focused on salaries in a study group of states in geographic proximity to Delaware. The 2001 Commission expanded its perspective by adding states of similar size and similar budgets. Although these states may have some significance in comparing salaries for the Executive and Legislative branches of government, the comparison is inappropriate for the Delaware judiciary. Given the commercial importance and national ranking of the Delaware Court system, the Delaware State Bar Association Committee on Judicial Compensation suggested that it would be more appropriate and useful to compare Delaware to those states that attempt to compete with Delaware as national and international business centers, namely New York, New Jersey, Illinois, California, Florida and Georgia (“Competitive Commercial Litigation Jurisdictions” or “Commercial Jurisdictions”). The ranking as first in quality in comparison with all fifty states supports the approach for national comparison for compensation purposes.

The 2005 Commission considered and adopted the Competitive Commercial Litigation Jurisdictions comparison methodology. The Delaware State Bar Association Committee on Judicial Compensation suggests that the 2013 Commission follow the precedent. Commercial Jurisdictions provide the best basis for accurate comparison as the group is in direct competition with the Delaware courts for the specialized business that provides nearly one-third of the annual State Budget. In sharp contrast to the states in the study group bearing few comparative similarities to the Delaware Judiciary other than geographic proximity, the Commercial Jurisdiction approach looks to those states that are attempting to compete with the Delaware Courts in those areas in which

Delaware has been the national leader. Delaware corporations with principal places of business in the competing Commercial Jurisdiction states regularly litigate cases in Delaware Courts. Consequently, these states have great interest in creating their own systems to compete with Delaware's expertise and accordingly offer the best comparisons for study. It is equally important to note that each of the competing Commercial Jurisdiction states continues to contact the various Delaware courts for technical assistance from both the business and personal courts.

A strong argument can be made for ranking Delaware first among the Competitive Commercial Litigation Jurisdictions in light of its position of prominence in the legal community. However, in light of the recommendations of past Commissions and the economic realities continuing to face Delaware, the Delaware State Bar Association on Judicial Compensation suggests that a consistent approach would be to compensate the Supreme Court at a level equal to the average of the top two Competitive Commercial Litigation Jurisdictions with a 5% supplement for the Chief Justice as shown in Table 1.

**Table 1. Average of top two Commercial Jurisdictions – Highest Court**

	Delaware (1/1/13 level)	Recommended
Chief Justice	\$200,631	\$224,533
Supreme Court Justices	\$190,639	\$213,841

Based on the salary levels established by the last three Compensation Commissions, the trial court salary is 95% of the appellate court salary. This percentage can be applied to reach recommended compensation for the Court of Chancery, Superior

Court, and Family Court from which appeals are taken directly to the Supreme Court. The recommended compensation for the trial courts as a percentage of the court to which appeal is taken is shown in Table 2.

**Table 2. Trial Courts as a Percentage of Court of Direct Appeal**

	Delaware (1/1/13 level)	Recommended
Chief Judges	\$191,630	\$213,306
Vice Chancellors, Superior Court Judges and Family Court Judges	\$180,233	\$203,148

The Court of Common Pleas handled 117,253 cases in 2011. Appeal from all Court of Common Pleas cases are taken to the Superior Court. Continuing the 95% level approach and a 5% supplement for the chief judge, results in the salary recommendations for the Court of Common Pleas as shown in Table 3.

**Table 3. Court of Common Pleas as a Percentage of Court of Direct Appeal**

	Delaware (1/1/13 level)	Recommended
Chief Judge	\$189,196	\$202,648
Court of Common Pleas Judges	\$173,949	\$192,991

Appeals of decisions by Commissioners and the Masters in Chancery are handled by the judges of the court in which the commissioner or master serves. This report recommends, for the current Compensation Commission's term, setting the compensation for commissioners at 65% of a judge of the same court for 2014, and increasing the

percentage by 2% in each the next three years. While the most comparable rate in a national review would be 75%, the recommended 65% in this report will bring the commissioners to parity with the midpoint of Level V Deputy Attorney General and Public Defender. Subsequent Commissions should consider an additional increase in the percentage applied to more adequately compensate these important judicial officers. The recommendation with respect to the Commissioners and Masters in Chancery is that salaries be set at the levels shown in Table 4.

**Table 4. Commissioners and Masters in Chancery**

Master in Chancery	\$ 132,047
Superior and Family Court Commissioner	\$ 132,047
Court of Common Pleas Commissioner	\$ 125,444

Appeals from decisions of the magistrates in the Justice of the Peace Courts are taken to the Court of Common Pleas. Level III Magistrates currently are compensated at 45% of the level of the Court of Common Pleas Judge. The Delaware State Bar Association Committee on Judicial Compensation recommends that Delaware Compensation Commission maintain that percentage for Level III Magistrates as well as the \$2,000 differential between Levels III/II and a \$3,000 differential between Levels II/I Magistrates. The Chief Magistrate of the Justice of the Peace Courts should maintain the 75% level of the Court of Common Pleas judge. The recommended compensation for the Justice of the Peace Courts is shown in Table 5.

**Table 5. Justices of the Peace**

	Delaware (1/1/13 level)	Recommended
Chief Magistrate	\$ 125,427	\$ 144,743
Level III	\$ 77,832	\$ 86,846
Level II	\$ 75,832	\$ 84,846
Level I	\$ 72,887	\$ 81,846

***E. Recommendations***

In light of the status of the Delaware Courts, comparisons with the Competitive Commercial Litigation Jurisdictions, and the precedent of prior Compensation Commissions, The Delaware State Bar Association Committee on Judicial Compensation recommends the following:

- 1. Compensate the Delaware Supreme Court at the average of the top two Commercial Jurisdictions' highest courts as shown below in Table 6.**

**TABLE 6. DELAWARE SUPREME COURT**

Chief Justice	\$ 224,533
Supreme Court Justices	\$ 213,841

- 2. Compensate the Court of Chancery, Superior Court, and Family Court, at the current percentage (95%) of the court to which appeals are taken (Supreme Court) as shown below in Table 7.**

**TABLE 7. COURT OF CHANCERY, SUPERIOR COURT, FAMILY COURT**

Chancellor, Presiding Judges	\$213,306
Vice Chancellors and Judges	\$203,148

3. **Compensate the Court of Common Pleas at the same percentage (95%) of the court to which appeals are taken (Superior Court) as shown below in Table 8.**

**TABLE 8. COURT OF COMMON PLEAS**

Chief Judge	\$202,648
Court of Common Pleas Judges	\$192,991

4. **Compensate Commissioners and Masters in Chancery at 70% of the level of the Trial Courts as shown below in Table 9.**

**TABLE 9. COMMISSIONERS AND MASTERS IN CHANCERY**

Master in Chancery	\$ 132,047
Superior and Family Court Commissioner	\$ 132,047
Court of Common Pleas Commissioner	\$ 125,444

5. **Compensate the Justice of the Peace Court, at the current percentage (45%) of the court to which appeals are taken (Court of Common Pleas), with current differentials between Levels III, II, and I; and compensate the Chief Magistrate at the current percentage (75%) of the Court of Common Pleas Judge as shown below in Table 7.**

**TABLE 10. JUSTICES OF THE PEACE**

Chief Magistrate	\$ 144,743
Level III	\$ 86,846
Level II	\$ 84,846
Level I	\$ 81,846

**6. Continue to give the judiciary the annual incremental increases awarded to State employees.**

Ideally, the Compensation Commission should have to make minor adjustments at the end of each quadrennial cycle to realign Delaware with the other comparable jurisdictions. In order to make this possible, it is essential to maintain any annual incremental increases as afforded to all State employees on an annual basis into the future in order to mitigate differentials between the Delaware Judiciary and comparison states in the years between Delaware Compensation Commission Reports. Continuation of any annual incremental increases is desirable to maintain the effectiveness of the present Commission's recommendations and future Commissions' reviews.

## ***F. Conclusion***

The first-place ranking of the Delaware Courts in the national legal community, the percentage of revenues generated based on the Judiciary's stability, and the significance of the courts to the citizens of Delaware argue strongly for significant increases in the compensation levels for all of the Courts. Recognizing the precedent of the prior Compensation Commission and the current economic climate, the Delaware State Bar Association Committee on Judicial Compensation recommends that the Compensation Commission adopt the proposed salary levels commensurate with the national and international status of the Courts that ensure the personal, corporate, and financial well-being of all Delawareans and the financial well-being of the State of Delaware will be maintained.