



# Federal Bar Association

*Office of the President*

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The Honorable Jon Porter  
Chairman  
Subcommittee on Federal Workforce and Agency Organization  
U.S. House of Representatives  
Washington, DC 20515

**Re: September 20 Hearing on Executive and Judicial Compensation in the Federal Government**

Dear Chairman Porter:

I write in connection with the September 20 hearing of the Subcommittee on Federal Workforce and Agency Organization on executive and judicial compensation in the federal government. Thank you for holding this hearing to examine the impact that the erosion of federal pay has had upon the federal government's ability to execute policy and administer justice. I respectfully request that this correspondence be included in the hearing record.

As you know, the Federal Bar Association has maintained a continual and growing concern over the inequities in compensation for federal judges and executives and the substantial adverse impact that the erosion of their pay has visited upon the health and vitality of the executive and judicial branches. Given the mission of the Federal Bar Association and our fundamental interest in the federal courts, we are especially alarmed by the levels of inadequacy to which the salaries of federal judges have fallen.

In 2001 and again in 2003, the Federal Bar Association, in collaboration with the American Bar Association, issued comprehensive reports documenting the problems of judicial pay erosion, along with recommendations for remedial action. We warned in 2003 that the "commitment to public service is perilously weakened when financial considerations deter excellent candidates from seeking appointment to the Federal bench and motivate sitting judges to resign prematurely from office to enter private practice or some other form of lucrative employment." Indeed, inadequate compensation for federal judges seriously compromises the protection of judicial independence, associated with the Constitutional guarantees of life tenure and undiminished salary. Moreover,

inadequate compensation narrows the pool of superlative candidates willing to be considered for appointment to the federal bench.

The problems in the erosion of federal judicial pay that we documented, in fact, have only worsened since our 2003 report. The late Chief Justice William Rehnquist and Chief Justice John Roberts, as well as the witnesses at your September 20 hearing, have underscored at various times the depth of the problems that continue to arise. In his 2005 Year-End Report on the Federal Judiciary, Chief Justice Roberts noted that the real pay of federal judges had declined by almost 24% since 1969, while the average American worker's real pay had increased by over 15%. The June 2006 report of the Government Accountability Office, entitled "*HUMAN CAPITAL: Trends in Executive and Judicial Pay*," looked at the problem from a similar vantage point, finding that the inflation-adjusted equivalent pay of the Chief Justice in 1970 was \$321,926 (in 2006 dollars), but today is only \$212,100, or 34% less because of pay deflation.

In one of his last year-end reports, the late Chief Justice Rehnquist noted that inadequate compensation for the federal judiciary is perhaps the single biggest threat to judicial independence. Just this week, I represented the Federal Bar Association at a major conference in Washington on the state of the judiciary. Judicial independence was a major topic of the conference, and, time and again, participants from every quarter of business, the judiciary and the private bar reinforced the need for a substantial increase in judicial compensation.

As we noted in both our 2001 and 2003 reports on federal judicial pay, the pay-setting mechanisms for federal judges, established under The Ethics Reform Act of 1989 (Pub. L. 101-194), are broken. The adequacy of judicial and executive salaries has not been reviewed by the Citizens' Commission on Public Service and Compensation, established by Congress under the Ethics Reform Act. Congress since 1989 has not acted to increase judicial salaries in a meaningful fashion. Nor have federal judges received the full extent of Employment Cost Index adjustments intended by Congress under the Ethics Reform Act.

The core problem with the current procedure for setting judges' pay is the statutory linkage of judicial salaries to the salaries of Members of Congress. This linkage unnecessarily causes federal judges to suffer the consequences of Congressional reluctance to confer itself a pay increase or even to award itself cost-of-living adjustments. Such Congressional anxiety is borne in the fear of negative reaction by some members of the public to even modest pay adjustments for Congress. Congressional paralysis on the subject of comprehensive pay reform for all three branches of government has unfairly suppressed the pay of federal judges (as well as federal executives) and subjected these officials to the corrosive effects of inflation in ways they never should have expected, nor should Congress have allowed.

Looking back at the recommendations of our 2003 report for combating the erosion of judicial pay, our recommendations are as pertinent and timely today as they were three years ago. We recommended then – and reaffirm today – the following actions:

- Congress and the President should promptly enact legislation to raise substantially the base salaries of federal judges. The salary increase needs to be large enough not only to restore denied Employment Cost Index adjustments for fiscal years 1995-97 and 1999, but also to raise judicial salaries to levels that reflect the importance of the judicial function and ensure their reasonable relationship with salaries of professionals in comparable jobs.
- Congress and the President should amend the Ethics Reform Act of 1989 to break the statutory link that couples cost-of-living adjustments for Federal judges with those of Members of Congress.
- Congress and the President should repeal Section 140 of Pub. L. No. 107-77, which requires explicit Congressional approval of any cost-of-living adjustment for Federal judges.
- Congress and the President should enact legislation to re-establish a salary review commission, similar to past Quadrennial Commissions, to recommend pay rates for Members of Congress, judges and appointed officials in top Executive Branch positions on a regular basis. Any such commission should be adequately funded and its members appointed promptly to ensure that it is operational soon after its authorization.

In conclusion, it is an unfortunate reality that there have been and will always be substantial differences in pay between federal judges and the highest-paid members of the legal profession. But that dissimilarity should never stand in the way of purposeful and meaningful action by the Congress and the President to elevate the salaries of federal judges and high-level federal executives – as well as Members of Congress – to their rightful levels. It is time, Mr. Chairman, to act. Our system of government and the assurance of the vitality of its three branches deserve no less.

We are grateful to you and the Subcommittee for your leadership in examining the pervasive problems underlying current compensation systems covering federal judges and high-level federal officials. On behalf of the Federal Bar Association, I commit our resources and continued assistance to the pursuit of the best solutions that restore fairness and stature to the pay systems covering these valued public officials.

Sincerely yours,

A handwritten signature in black ink, appearing to read "W. N. LaForge", with a long horizontal flourish extending to the right.

William N. LaForge  
National President