

UNITED STATES BANKRUPTCY COURT

MIDDLE DISTRICT OF TENNESSEE

GEORGE C. PAINE, II  
CHIEF JUDGE  
615-736-5587  
FAX: 615-736-2716

218 CUSTOMS HOUSE  
701 BROADWAY  
NASHVILLE, TENNESSEE 37203  
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March 24, 2011

John Wm. Butler, Jr.  
Skadden, Arps, Slate  
Meagher & Flom LLP  
333 West Wacker Drive  
Suite 2100  
Chicago, IL 60606

RE: Bankruptcy Judges Salary

Dear Jack:

I am writing to you and other prominent members in our bankruptcy family about the critical importance of increased judicial salaries to the survival of the bankruptcy bench. No one knows better of the need for highly trained financial experts on the bench than those who make their living dealing with incredibly complex and sophisticated problems in the bankruptcy courts.

As I am sure you are aware, federal bankruptcy judges make \$160,000 annually. Except for cost-of-living increases, five of which were denied us before the President's new edict, this salary has not been raised in over 20 years. It is also less than what some of our top lawyers can generate from handling one large bankruptcy case.

When I related this to my friend John Bellinger, a non-bankruptcy lawyer with Arnold & Porter in Washington, D.C., his response was "Disgraceful. Awful. Shameful." I trust that bankruptcy lawyers would feel the same.

The chief reason for the lack of a raise or cost-of-living increases is that judicial and Congressional pay are linked. Congress' unwillingness to give themselves a salary increase, has meant no increased pay for bankruptcy judges. Congress has allowed many other federal agencies to delink from Congressional salaries. As a result, an attorney at the FDIC, for example, can receive a \$230,000 base salary, \$71,000 more than a bankruptcy judge. The attached memo explains how some of these agencies successfully "delinked," and gives examples of how

under-compensated the judiciary truly is.

More glaring is that our law clerks and clerks of court can earn a higher salary than a bankruptcy judge, since they receive locality pay and regular cost-of-living increases. My law clerk earns a salary equivalent to 87% of mine and my 43-year-old clerk of court, who has held the position for five years, as opposed to my 30 years on the bench makes five thousand dollars more than I do. This latter situation exists in 28 of the nation's bankruptcy courts.

For a bankruptcy judge in a larger metropolitan city such as New York City, handling some of the largest and most complicated cases before the bench, this salary is appalling.

My chief reason for bringing this matter to your attention is that I believe this inequity can only lead to less qualified candidates applying for judgeships rather than highly qualified individuals seeking the position as the capstone to a successful commercial legal career. Candidates for office will be those either seeking a step up to a \$160,000 salary or a stepping stone to a lucrative private practice. With such low judicial salaries, I am also concerned about the real possibility, if not inevitability, of corruption when underpaid judges are dealing with multibillion dollar cases.

This situation is resulting in a return to the "referee" days where the pay was paltry, the prestige minimal, and the position unattractive. While this situation also exists in the Article III judiciary, it is even more disgraceful in our bankruptcy family, considering the critical importance of the bankruptcy bench to the national economy and the international bankruptcy community.

In addition, given the increasing costs of higher education, a judge may choose to leave the court in order and seek a higher paying job in order to pay for the education of his or her children. In fact, many judges with school-age children have already found it necessary to leave the bench after only a few years to enter a private law practice in order to send their sons and daughters to college.

You and your peers have enjoyed tremendous success in a sophisticated and complex practice of bankruptcy law because of the extraordinary competence and dedication of the bankruptcy judges. I know you have a great appreciation for your judges' work and realize that it is in the best interest of the bankruptcy system as a whole, and particularly prominent bankruptcy practitioners such as yourself, to have a well qualified, well respected, and therefore fairly paid bankruptcy bench.

I also know that there is no better group than you, your influential colleagues, and clients to help address the need for higher judicial salaries to protect the integrity of the entire bankruptcy system. As bankruptcy practitioners who have handled the most complicated cases, you have an extraordinary ability to facilitate change, to offer creative solutions in impossible economic situations, and to persevere in the pursuit of successful resolutions to

our most difficult problems. You and your colleagues have proven your mettle in winning such uphill battles as Lehman, GM, Delco, Chrysler, Madoff and other large cases.

The bankruptcy judges have been working with superb Washington counsel to address the problem of judicial salaries for some years without success. While the argument seems difficult in these economic times, I hope you, your colleagues, and organizations you are involved with, will assist the bankruptcy bench with this problem. The only way to protect the bankruptcy system that has created a successful, sophisticated, and well-compensated bankruptcy bar is to push for increased judicial salaries so that judgeships become the capstone of successful careers, not stepping stones or gravestones.

Lastly, I feel comfortable writing to you since you do not practice before me. I am retiring this year and I am putting your firms on my recusal list. No bankruptcy judge accepted a judgeship to get rich. Nevertheless, we did not expect in serving the federal judiciary to become laden with debt, both educational and otherwise.

Please let me know if you have any questions. I have also attached my resignation letter that expresses the same concern to Chief Judge Alice Batchelder of my circuit.

With best personal wishes, I am

Yours very truly,

George C. Paine, II

GCP2/epc  
Enclosures

P.S.

I have sent this to many of my friends and colleagues in the American College of Bankruptcy and International Insolvency Institute, but am confident I've missed others, so please feel free to share it with anyone who might be concerned about this situation.

## MEMORANDUM

### **DELINKED FEDERAL EMPLOYEE SALARIES EXCEEDING JUDICIARY PAY**

It does not appear that there is any resource showing the number of federal employees earning in excess of \$200,000. It is likely that the number of federal employees earning salaries greater than bankruptcy and magistrate judges (and even district judges) would be in the thousands (since the basic salaries of many of the 8,000 members of the Senior Executive Service alone may exceed the salaries of bankruptcy and magistrate judges).

Since the enactment of the Ethics Reform Act of 1989 (which authorized a significant increase in the salaries of federal judges), the salaries of numerous federal employees have been delinked from the salaries of district judges and members of Congress. As a result the federal salary structure has become inverted, so that rank-and-file employees may now be paid salaries well above those of Constitutional officers. In recent years, federal departments and agencies with increasing frequency have convinced friendly congressional oversight committees to exempt them from all or part of the pay limitations of title 5, United States Code.

For example, the Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004 established a three-component system of compensation for federally employed physicians and dentists, consisting of basic pay, market pay, and performance pay. See Public Law No. 108-445. By statute, the aggregate compensation of these employees is capped only by the Presidential salary, which is currently \$400,000. See 38 U.S.C. sec. 7431(e).

Several examples of delinking include salaries for the Veterans Health Administration, the Department of Health and Human Services, The Securities and Exchange Commission, the Department of Army Command, the Banking Agencies, and the FDIC among others. The Veterans Health Administration appears to be exercising its authority under title 38, United States Code, to pay physicians up to \$325,000 annually. At the Department of Health and Human Services (DHHS), the aggregate compensation of physicians and dentists (exclusive of the Public Health Service) appears to be capped (as a matter of policy) at a more modest \$250,000 annually.

The salary structure at the Securities and Exchange Commission (SEC) was delinked from the salaries of district judges and members of Congress pursuant to the "Investor and Capital Markets Fee Relief Act." See Pub. L. No. 107-123. This legislation authorized the SEC to develop a system of pay and benefits similar to that developed by the banking agencies (i.e., the Comptroller of the Currency, the National Credit Union Administration Board, the Federal Housing Finance Agency (of the Department of Housing and Urban Development), the Farm Credit Administration, and the Office of Thrift Supervision) under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (codified at 12 U.S.C. sec. 1833b). The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 authorizes the Federal Housing Finance Agency (of the Department of Housing and Urban Development) to "fix the compensation of . . . officers and employees . . . without regard to the provisions of chapter 51 and subchapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates." See Pub. L. No. 102-550, sec. 1315, codified at 12 U.S.C. sec. 4515.

The Federal Deposit Insurance Corporation's (FDIC) organic statute provides that the Board of Directors of the FDIC "shall have the power . . . [t]o appoint officers and employees . . . , to define their duties, [and] fix their compensation" (emphasis added). Consistent with this independent pay-setting authority, government-wide pay caps do not apply to the FDIC. Congress in enacting FIRREA gave the other financial regulatory agencies pay authority similar to the FDIC's and required those agencies (including the FDIC) to seek to maintain "pay comparability" with one another to avoid competition for employees. See 12 U.S.C. sec. 1819(a). The FDIC currently employs about 5,000 people. About ninety of those positions fall within the FDIC's Executive Management classification band, which is currently capped at \$250,000. See <http://www.fdic.gov/about/jobs/salarystructures.html>. Another 500 positions are considered managerial and supervisory in nature, and the maximum salary at this level appears to be \$237,000.

Examples of higher paying positions from these delinked agencies can be seen in current recruiting efforts and salaries paid to other federal employees:

<b><u>AGENCY</u></b>	<b><u>SALARY INFORMATION</u></b>
Department of the Army Medical Command	currently recruiting a "Medical Officer" (payable up to \$400,000 annually)
Department of the Navy	recruiting a "Physician Neurologist" (payable up to \$245,000 annually).
SEC	currently recruiting for two associate director positions payable up to \$226,160 annually.
Office of the Comptroller of the Currency	currently recruiting for a Supervisory National Bank Examiner (payable up to \$234,938 annually), an Analyst to the Deputy Comptroller (payable up to \$205,618), and a Senior Financial Analyst (payable up to \$174,689 annually).
FDIC	seeking a Senior Attorney and a Senior Counsel that show that the maximum salaries of \$205,014 and \$230,700.
Federal Reserve Board	website indicates employees may be paid an annual salary of up to \$205,570, and is currently recruiting for two positions that are payable up to \$178,130 and 205,570.
Tennessee Valley Authority	Under a Freedom of Information Act request, TVA released documents showing that the federally owned corporation paid salaries to its officers in fiscal year 2009 of \$194,837 to \$1,153,270.

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January 3, 2011

Hon. Alice M. Batchelder  
Chief Judge  
U.S. Court of Appeals for the Sixth Circuit  
Donald J. Pease Federal Building  
143 West Liberty Street  
Medina, OH 44256

RE: Retirement

Dear Chief Judge Batchelder:

I wanted to inform you that I will be retiring by the end of 2011. It is my intent in letting you know now to give the Circuit a full year serving to select my successor.

I have loved doing this job for almost 30 years and cannot imagine a better one. It has allowed me to be involved with critical and complex issues to the benefit of the economy and help the working people of this community and the businesses of this region. Further, I have thoroughly enjoyed interaction with commercial law judges of Eastern Europe, Russia, Asia and Latin America that I never imagined possible from a judgeship in Nashville, Tennessee.

I will confess to you that one of the reasons I am retiring when I feel like I have plenty of mileage left, is the concern that the federal judiciary is grossly under appreciated in regards to salary.

As you well know, we have not had a salary increase since 1989 and have been denied cost of living increases at least five times excluding the one that was just announced. If my younger son who is in law school accepts the offer he has from a law firm, the day he starts work knowing nothing about the practical aspects of the law, he will be making more than I do. This disparity is all the more glaring when you realize the judges handling the critical multi-billion dollar mega-cases in New York are also making less than what my son and his peers do upon entry into the profession.

I was extremely fortunate that one of my sons had a full scholarship to college and the other went to a reasonably priced state school so they did not have astronomical debt

after going to graduate school.

I cannot fathom how my friends Guy Cole, John Rogers, Jeff Sutton, and Todd Campbell can educate their children even though they make more than I do. I assume they or their children are incurring terrific debt (my younger son faced \$83,406 in fees for his JD/MBA program this year at Stanford without the "study trip"). It has become truly impossible for federal judges at any level to educate their offspring on our salaries.

Unfortunately, I will be unable to attend the Circuit Conference in June, and I will miss saying good bye to my friends and colleagues of the Sixth Circuit.

Many thanks for everything you do for the Circuit. With best personal wishes, I am

Yours very truly,



George C. Paine, II  
U.S. Bankruptcy Court

GCP2/epc

cc: Hon. Gilbert S. Merritt  
Hon. Martha Craig Daughtrey  
Hon. Jane Branstetter Stranch  
Hon. Todd J. Campbell  
Hon. Keith M. Lundin  
Hon. Marian F. Harrison  
Clarence Maddox, Esq.  
Matthew T. Loughney, Esq.

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Thank you for your interest.