

Appendix “18” Judge of Compensation Claims Salary Analysis

There is a wide disparity in compensation for Florida’s Judges of Compensation Claims. Compensation has not kept pace with inflation, has become increasingly inadequate compared to other judges, and when coupled with a less generous retirement calculation is no longer adequate to encourage the application of the best and brightest.

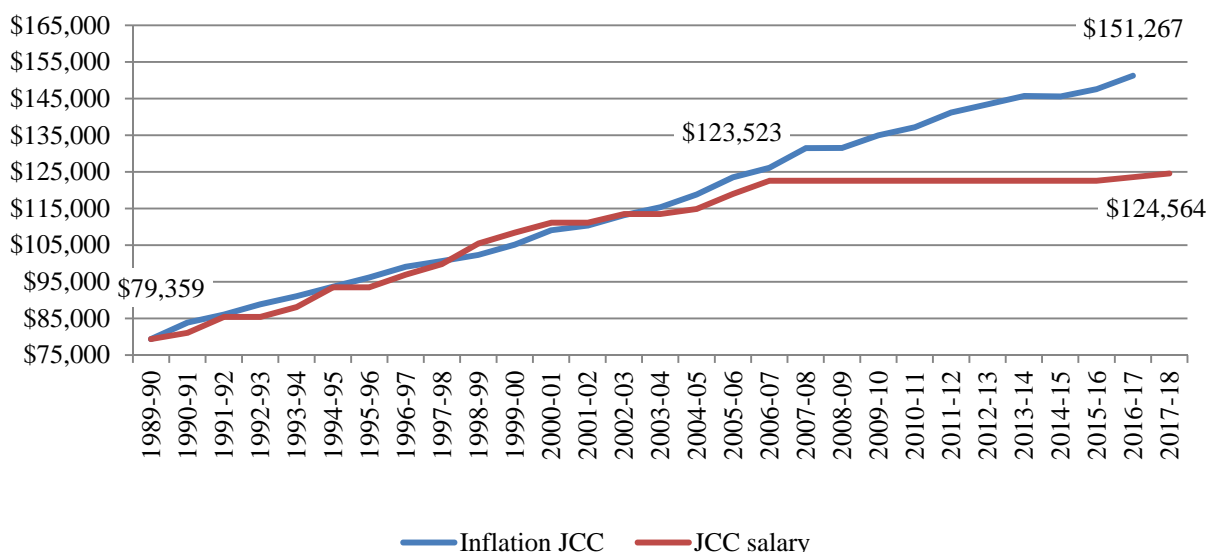
The State of Florida has grown dramatically in the last 28 years. In 1989, the population was 12.64 million,¹⁵⁹ the Florida Office of Judges of Compensation Claims (OJCC) consisted of 31 Judges, and operated 17 offices throughout the state; each judge responsible for approximately 407,742 Floridians.¹⁶⁰ In 1993, the population had increased to 13.93 million, mediation was gaining acceptance, and the legislature added 31 state mediators to the OJCC team. In 2001, the Judges of Compensation Claims (JCCs) became responsible for monitoring and collecting child support,¹⁶¹ though no staff or other resources were provided for this additional workload. The OJCC collects about \$10 million in child support annually.¹⁶² In 2013, the OJCC budget was decreased by eliminating three state mediator positions (and a judicial position that had been added in 2006). In 2017, the state population is 21 million,¹⁶³ and the OJCC remains staffed by 31 judges and 28 state mediators in 17 offices. Each JCC is now responsible for approximately 677,419 Floridians.¹⁶⁴ Despite increased responsibility, the OJCC today is staffed with fewer personnel than in 2001.

Judges of Compensation Claims¹⁶⁵ were originally part-time positions. In 1989, after the positions were changed to full-time, the pay of JCCs was codified in section 440.45(4).¹⁶⁶ That section requires all OJCC salaries to be paid from the Workers’ Compensation Administrative Trust Fund (WCATF). When workers’ compensation mediation became mandatory in 1993, the state mediator salary was similarly set statutorily in 440.25(3)(b).¹⁶⁷ These provisions set JCC salary by reference to other payroll (JCCs tied to Circuit Court and mediators tied to the JCCs). These were referred to as “tie-in” statutes, and both tie-ins were removed from chapter 440 in 1994. Although there is conjecture regarding the reason for removal, no official justification for removing the tie-ins has been found.

The WCATF is funded 100% by assessments on workers’ compensation premiums and contributions by self-insured employers. No general revenue is contributed to the WCATF. All of the expenses of the OJCC, including all salaries, are paid from the assessments in the WCATF.¹⁶⁸ A salary increase in the OJCC would have no impact on general revenue expenditures.¹⁶⁹

According to the Florida Supreme Court, there are “over 900 trial court judges in all 20 circuits.”¹⁷⁰ The Circuit Judges have an incorporated Conference to represent their interests.¹⁷¹ The County Judges have a Conference.¹⁷² The Florida appeals court judges¹⁷³ have a Conference.¹⁷⁴ In all, there are about 1,000 Article V. judges in Florida. This body has a collective voice and established organizations to assure attention to their needs. There is no such incorporated body to similarly represent the interests of the Judges of Compensation Claims, a body of only 31 judges (3% of the population of Article V. Judges).

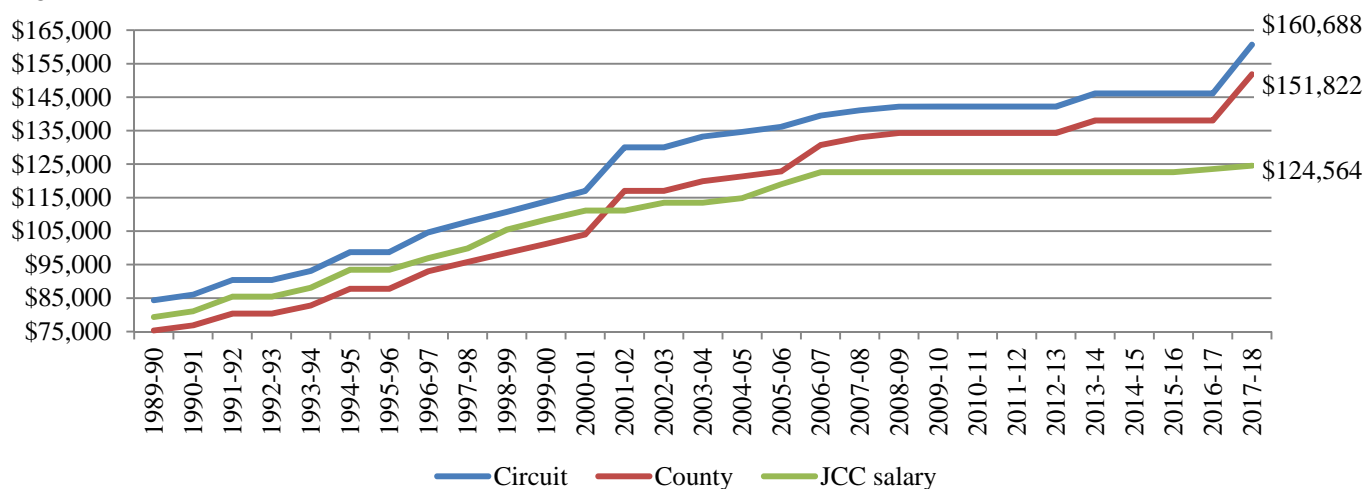
In 1989-90, the salary of a Florida Judge of Compensation Claims was \$79,359. That salary was increased thereafter periodically, even after the “tie in” was removed from chapter 440 in 1994. However, that salary has not consistently kept pace with inflation, as illustrated in this chart.



This illustrates the trend of JCC salary remaining reasonably consistent with inflation until the early part of this century. However, the salary has markedly failed to keep pace with inflation¹⁷⁵ since the early 2000s. The JCC salary, in actual purchasing power, has diminished over \$27,000 compared to the Consumer Price Index (CPI).

This illustration of the effects of inflation is persuasive. However, it is based upon the CPI, a national averaging of prices and costs. Inflation in Florida is demonstrably more significant than the CPI illustrates. Workers' compensation benefits in Florida are subject to a maximum allowable amount, commonly referred to as the "maximum compensation rate."¹⁷⁶ The maximum compensation rate is calculated annually from wages reported by employers across the state and published by the Division of Workers' Compensation.¹⁷⁷ In 1990, the statewide average weekly wages of Floridians resulted in a maximum compensation rate of \$362.00 calculated from the average wage paid by Florida business the prior year. As of 2017, that rate had increased to \$886.00, an increase of \$524.00 per week. That is an increase of 145%. If the 1989-90 JCC salary (\$79,359) had been increased using the same process statutorily adopted for determination of statewide average weekly wage, the 2017 JCC salary would be \$194,232. That is \$68,668 more than the 2017 JCC salary in actuality.

The JCC salary has also not kept pace with the Circuit Judges. With the 2017 increases in Article V. judge compensation, that gap has recently widened even more. In 2017-18, JCCs will earn \$36,124 less than Circuit Court Judges.



The effect of eliminating the statutory tie-in for JCCs has been profound. That stark difference has been significantly amplified by the 2017 ten percent pay raise for Article V. Judges.¹⁷⁸ With the recent pay increase for Article V. judges, the difference between a Circuit Court judge and a Judge of Compensation Claims in October 2017 will be \$36,124. This is compared to the \$4,000 difference in 1989 under the statutory tie-in (adjusted for inflation, that \$4,000 in 1989 would be about \$7,888 today). In 1989, Judges of Compensation Claims were paid about 94% of the Circuit Judge salary, and about 105% of the County Judge salary. In 2017-18, the JCC will be paid about 78% of the Circuit Judge salary, and about 82% of the County Judge salary. The JCC's retirement will be roughly 50% of the Circuit Judge. It is also noteworthy that all Article V. Florida judges enjoy a retirement benefit that is based upon 3% of salary.¹⁷⁹ However, the Judges of Compensation Claims' retirement benefit is based upon a calculation using 2% of salary. Circuit Judge retirement benefit is roughly double the retirement of a Judge of Compensation Claims.

To illustrate this retirement point, compare two judges, each appointed at the end of 2017, and each serving eight years with no further pay increases. The Circuit Judge retirement would be \$39,565.12 (\$160,688 x .03 = 4,820.64; x 8 years of service = \$39,565). The Judge of Compensation Claims retirement would be 19,930.24 (\$124,564 x .02 = 2,491.28; x 8 years of service = \$19,930.24). The Circuit Judge retirement is roughly double the Judge of Compensation Claims.

The Judges of Compensation Claims are gubernatorial appointees, selected from a list submitted by the Statewide Judicial Nominating Commission for Judges of Compensation Claims (SWJNCJCC). Applicants seek this job out of academic interest and a sense of public service. To apply, an attorney must have been practicing law for five years, and have significant experience in workers' compensation.¹⁸⁰

In order to vest in the state retirement pension, 8 years of service is required.¹⁸¹ An attorney with exceptional experience and an established practice may be unwilling to assume the risks of appointment as a JCC,¹⁸² based upon the historical salary stagnation, notable pension calculation differential, and comparison of compensation overall to private practice.

In 2017 the Office of Judges of Compensation Claims noticed two judicial vacancies for application, Gainesville and Tallahassee. Four attorneys applied for Gainesville, and only one for Tallahassee. The appointment process requires at least three applicants for any vacancy.¹⁸³ Thus, the lack of interest in the current Tallahassee appointment will require that the anticipated vacancy be re-advertised, and the applicants interviewed at another Commission meeting. For the Gainesville vacancy, the Commission's role will be to eliminate one of the four applicants from consideration. The demonstrated tepid applicant interest has been illustrated in other application cycles, as illustrated in this chart.

City (OJCC District Office)	JNC Meeting Date	Applicants
Gainesville	8/7/2017	4 ¹⁸⁴
Tallahassee	8/7/2017	1 ¹⁸⁵
Miami (Castiello)	2/17/2017	2.5 ¹⁸⁶
Miami (Hill)	2/17/2017	2.5 ¹⁸⁷
Lakeland	11/1/2016	4 ¹⁸⁸
West Palm Beach (D'Ambrosio)	11/1/2016	6 ¹⁸⁹
Miami (Hill)	11/1/2016	2 ¹⁹⁰
Reappointments only	8/22/2016	
West Palm Beach (Punancy)	3/21/2016	9 ¹⁹¹
Panama City	3/21/2016	4 ¹⁹²
Ft. Myers (Sturgis)	9/28/2015	4 ¹⁹³
Pt. St. Lucie	9/28/2015	8 ¹⁹⁴
West Palm Beach (Basquill)	9/28/2015	4 ¹⁹⁵
Ft. Myers (Spangler)	2/16/2015	8 ¹⁹⁶
Ft. Lauderdale (Pecko)	2/24/2014	6 ¹⁹⁷
Melbourne	2/24/2014	9 ¹⁹⁸
Miami (Kuker)	8/19/2013	4 ¹⁹⁹
Daytona	2/11/2013	9 ²⁰⁰
Miami (Harnage)	8/20/2012	4 ²⁰¹
Tampa (Murphy)	8/20/2012	5 ²⁰²
Melbourne	1/23/2012	Cancelled
Reappointments only	9/27/2011	
Reappointments only	2/7/2011	
Jacksonville (Rosen)	8/16/2010	8.5 ²⁰³
Jacksonville (Pitts)	8/16/2010	8.5 ²⁰⁴
Lakeland (Hofstad)	8/16/2010	11 ²⁰⁵
Reappointments only	4/5/2010	
Gainesville (Thurman)	2/2/2009	13 ²⁰⁶
Reappointments only	4/20/2009	
Jacksonville (Dane)	8/18/2008	10 ²⁰⁷
Gainesville (Thurman)	8/18/2008	
Reappointments only	4/25/2008	
Reappointments only	8/14/2007	
Orlando (Thurman)	6/22/2007	14 ²⁰⁸
Reappointments only	4/2/2007	

This data supports that there have been more vacancies to fill in recent years, which may illustrate a retention issue.²⁰⁹ The data further supports that the applicant pools are recently more consistently small. Where vacancies had attracted as many as ten applicants per vacancy, recent history has been markedly lower, with two recent efforts (Miami 2016 and Tallahassee 2017) not even attracting three applicants. Retention of incumbents and attraction of the best available attorneys may not be illustrated by this data. The mediator salary level also poses similar problems, with experienced State Mediators leaving to return to private practice for financial reasons, and there is diminished interest in and application for vacancies.

These compensation disparities are marked and serious. The nature of this system is dependent upon the service of judges who are timely, dedicated and efficient. There is no justification for the serious and widening pay gap between Florida Judges of Compensation Claims and the remainder of Florida's judges. It is suggested that the most expedient method of correcting the salary deterioration would be a statutory tie-in similar to that previously removed in 1994. The addition to section 440.45(2)(a) of the following phrase would be appropriate:

Effective July 1, 2018, each full-time judge of compensation claims shall receive a salary in an amount equal to \$10,000 less than that paid to a circuit court judge. The chief judge shall receive a salary of \$1,000 more per year than the salary paid to a full-time judge of compensation claims. Mediators employed on a full-time basis by the office of judges of compensation claims shall receive a salary in an amount equal to 60 percent of the salary of a judge of compensation claims. These salaries shall be paid out of the fund established in s. 440.50. Judges of compensation claims retirement calculation shall be identical to the calculation for circuit judges.