

The Toledo Blade (Toledo, OH)

June 17, 2007

Federal Judges' Pay Gap

TELL workers pulling 10 hours a day on an assembly line or suggest to retail sales clerks in a department store - pushed to make ends meet as costs for everything from gas to food stretch their budgets - that federal judges are underpaid, and expect less than enthusiastic agreement.

That response is understandable. U.S. district court judges currently make \$165,200 a year, while federal appeals court judges earn \$175,100. Not bad wages.

But in the world of big-time, high-profile law firms, that's often chump change, even for some of the new arrivals. And it's a fraction of what veteran top attorneys in private practice pull down. Fine, let them earn what the market will bear. But when significantly higher salaries in the range of hundreds of thousands of dollars erode the federal bench by enticing first-rate judges into private practice, it's the federal judiciary and the American public that suffer, and that we do worry about.

If we want the best and the brightest appointed to the federal bench, and retained once they are there, it seems appropriate to address the siren song of better pay outside of government. Fortunately, the issue is at least being addressed with more urgency than in the past. Chief Justice John Roberts said earlier this year that the problem will "inevitably result in a decline in the quality of persons willing to accept a lifetime appointment as a federal judge."

The effect already is being seen. According to published reports, 100 federal judges have resigned or retired in the last 17 years.

Of course we expect federal judges to bring with them a finely honed sense of service - altruism, even. No one is suggesting a judge making more than \$165,000 a year is destined for poverty; nor do we believe dramatic increases are warranted.

But by almost any measure, particularly given their special skills and expertise, federal judges' pay is lagging when compared with the rest of the legal profession. The salary of federal judges has for 20 years been linked to that of Congress. And with lawmakers keenly aware of how pay raises for themselves appear to voters who are having to pinch pennies in tough economic times, those salaries have eroded.

In fact, over the last 16 years, while the inflation-adjusted wages for most other federal workers have risen by 15.1 percent, federal judges' inflation-adjusted pay has declined 10.8 per cent. The prestige of the position and a sense of public service are powerful incentives for most judges on the federal bench. But it is unrealistic to expect them to continually look down from the bench

at lawyers earning substantially higher salaries without wondering whether the grass isn't greener in private practice.

The Constitution says that judges' pay should not be "diminished" while they are in office.

It doesn't say their salaries should sit still while the rest of the legal profession passes them by.