

# Judicial Salaries Are Front And Center In A Tough Economy

By Bill Daniels

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I saw a front page headline on the Wall Street Journal's "B" section teasing "How to Recruit While in Chapter 11," which made me think of California, the budget crisis and just what a mess the latest judicial pay conundrum is threatening in our Southern California courts.

I'm referring, of course, to *Sturgeon v. Los Angeles* (Oct. 10, 2008) 167 Cal.App.4<sup>th</sup> 630, reh. den. Nov. 7, 2008, rev. den. Dec. 23, 2008), which has triggered rumblings about some forced departures from the Superior Court bench in Los Angeles.

Now, if you've been following the news, you know that *Sturgeon* is a delegation case in which a plaintiff argued successfully that a pay and benefit differential L.A. County grants judges in addition to the base pay authorized by the Legislature is, essentially, illegal, and has to stop.

The opinion states the pay differential was worth \$46,436 per judge in 2007, or about 27 percent of each judge's prescribed salary. (I posted a copy of the entire opinion on my blog at [BillDanielsLaw.com](http://BillDanielsLaw.com) in case you're interested.) L.A. County has paid the differential for years, recognizing that the cost of living in Los Angeles justifies a higher level of compensation local bench officers.

Only, the differential can't continue, the Court of Appeal ruled in *Sturgeon*. The California Constitution says the Legislature has to set compensation for judges and unless the Legislature grants L.A. County authority in a way that passes constitutional muster, L.A. Superior Court judges are going to take a 27 percent pay cut as a matter of law.

Steven L. Mayer, an appellate lawyer at the Howard Rice law firm in San Francisco explained to me on the phone that the decision doesn't bar differential pay *per se*. Rather, *Sturgeon*, he said, holds that the Legislature hasn't provided adequate guidelines for L.A. County to follow, hence the unconstitutionality of the whole deal.

"As long as there is a meaningful standard, it'll be okay," Mayer opined, saying the Legislature can fix the problem if and when they so choose. "Unfortunately for the judges, the Legislature has a lot of things on its plate. So they're not going to get to it anytime soon."

With headlines trumpeting a projected \$41 billion state deficit and financial Armageddon threatening the Golden State, it's easy to understand just what Mr. Mayer is talking about.

Now, it may well be that by the time this column finds its way into print, the whole problem is solved, L.A. judicial pay is back on track and any potential for an immediate brain drain from the bench goes into the "nevermind" bin, which would be a great result so far as I'm concerned.

Only, I don't think that's likely. It's not just because of the state's financial morass, either. What's going on in L.A. is really just a symptom of what is taking place in our entire judicial system, specifically, a huge debate on just what constitutes appropriate pay for judges, including how much is too much and how

little is too little. That debate, I am afraid, will play just as large a role in resolving the L.A. area judges pay problem as any state or local financial problem.

An interesting source for some perspective is the National Center for State Courts ("NCSC"), which keeps track of, among other things, judicial salaries in the fifty states and the federal system.

California, it turns out, ranks number one in judicial compensation in the entire country according to the NCSC ranking, with a base pay of \$178,789. Illinois is number two (\$169,555), the District of Columbia is number three (\$169,300), Delaware is number four (\$168,850) and Alaska is number five (\$165,996).

The federal system is unranked by the NCSC, but is reported as \$169,300.

The low end of spectrum includes Montana (\$99,234), Mississippi (\$104,170), North Dakota (\$108,236), South Dakota (\$110,337) and New Mexico (\$111,631).

Compare that range with the Department of Labor's statistics for attorney salaries. According to the Bureau of Labor Statistics, the median annual earnings of all wage and salaried lawyers in May 2006 was \$102,470. The middle half of the profession earned between \$69,910 and \$145,600. Median annual earnings in the industries employing the largest numbers of lawyers were: management of companies and enterprises (\$128,610), federal government (\$119,240), legal services (\$108,100), local government (\$78,810) and state government (\$75,840).

I think the numbers help frame the judicial compensation debate rather nicely.

On one side (and full disclosure, this is the side I'm on), the argument is: Pay judges at a rate where we can attract the best and the brightest because our justice system depends on quality men and women who can make quality decisions from the bench.

Advocates for higher judicial pay included Chief Justice John Roberts, who said the level of judicial pay had reached "the level of a constitutional crisis" in his 2006 year end report to Congress and California Supreme Court Chief Ronald George, who is on record as opining that judges are leaving the bench because they can't afford to put their kids through college.

The other side of the debate was summarized nicely by Thomas Jefferson School of Law associate dean Steven Semeraro, who was quoted by the *San Diego Daily Transcript* as stating: "My sense is that there are just a spectrum of lawyers out there who want different things out of their careers. Some want to make a lot of money and the place to do that is generally private practice. I don't think you can ever satisfy those people with any level of judicial salary."

So, I suppose the lesson here is, *Sturgeon* may well trigger a significant upheaval on the Los Angeles County bench, but it's really just a symptom of a larger debate over how much we want to fund a justice system that will continue to attract quality judges.

Since our livelihoods depend on the outcome, it's probably time for consumer lawyers to become even more engaged in the debate from the grass root level on up into leadership.

Finally, no matter how you feel about judicial pay levels, you'll have to agree that forcing any group into taking a sudden 30 percent pay cut without a chance to plan or adjust is fundamentally disruptive and

unfair. California has enough trouble without forcing quality public servants back into the private sector against their will.

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**For additional reading and learning:**

[The Cost of Bias in the Legal Profession](#), Bias in the judicial system costs us all.  
[Aguilar And The New Face Of Summary Judgment](#). Supreme Court and the Court of Appeal have published four important opinions redefining the law of summary judgment.

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