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March 22, 2021

The Honorable Graham Filler, Chair, House Committee on Judiciary
Members of the House Committee on Judiciary

Statement Regarding

HB 4447 (Lightner) - Courts: judges' salaries; make "fully funded" by state; grant trial judges an increase in salary of $45,724 under current state of case law regarding supplemental judicial salaries; resume allowing counties or district court funding units to pay supplemental salaries without limitation.

Brief History of Judicial Salaries – Context to Where Salaries Are Today:

About fifty years ago, the Legislature set judicial salaries. With the creation of the District Court in 1968 and increasing salaries for probate judge shortly after that, the Legislature set the state-paid minimum, set a maximum salary, and allowed court-funding units to supplement salaries in between.

Going back to the 1970's and early 1990's, the Legislature addressed judicial salaries frequently, establishing a connection between the salary of Justices of the Michigan Supreme Court and the maximum salary of judges of the Court of Appeals, Circuit Court, Probate court, and District court. At the time, the salary of justices was set and increased by SOCC on a fairly regular basis. At one point, the percentages of total salary were 96%. 92%, 88%, and 84%. When SOCC granted a sizable salary increase for Justices, Gov. Engler insisted that those percentages be scale back.

Another factor: While total judicial salary for trial and appellate judges for years has been determined as a percentage of the salary of justice of the Supreme Court, the real determination of the base salary for trial judges was set for many years by a provision then in MCL 600.555 that said the base salary of circuit judges was "as provided by law"; and Rep. Richard Young, as long-time Chair of the Judiciary budget Subcommittee, annually set that amount at 55% of the salary of Justices in boilerplate.

In 1996, first court reorganization (PA 374, to undo state funding of Wayne Circuit and District 36 and abolish Recorder's Court) and then to establish the Family Division of Circuit Court (PA 388) reset the respective percentages were at 92% (Ct App), 85% (Cir+Prob) and 84% (Dist). The salary percentage of district judges was the last issue resolved in PA 388.

By a mathematical oddity, the supplemental for district judges was higher than the supplemental for circuit or probate judges. When the Legislature finally set the circuit base salary by statute, to ensure that no judge saw a reduction in supplemental salary, the respective statutes had to set the supplemental salary for all trial judges at the district court level of **$45,724**, which is still the supplemental amount. If court-funding units pay that exact amount, the funding unit is fully reimbursed by the state – so for 25 years the state has in effect paid the full salary of trial judges, part indirectly. The precedent was set in 1996 that all future increases would be paid by the state with the goal to lessen the burden on counties for judicial salaries.

Stagnant judicial salaries (and no SOCC increases for Justices) led the Legislature grant a COLA increase to trial judges equal to the same percentage increase as state civil service nonexclusively represented employees classified as executives and administrators, that addition payable by the state. The maximum salary cap rises accordingly.

Policy Objections to Restoring Unlimited Supplemental Judicial Salaries under HB 4447:

HB 4447 would junk the current carefully crafted judicial salary structure. It would restore the unlimited ability (and burden) of counties in particular to increase local supplemental

salaries, blow a huge whole in uniform salaries that it took decades to achieve, and get salaries all cattywampus with circuit judges making more money than the Court of Appeals and likely some district judges making more than circuit or probate – a regrettable result.

Uniform judicial salaries are consistent with two principles:

!. Under Article VI, Sec. 1, Michigan has "one court of justice".

2. The Supreme Court and advocates of a unified trial court consider judges equal and fungible and concurrent jurisdiction and family court plans underscore interchangeability.

Allowing, ne encouraging, supplemental salaries for trial judges will create disparities that favor judges in the more affluent and judge-influenced counties – benefitting the fortunate judges while colleagues just as able, qualified, and hard-working in counties that are struggling with budgets will not be similarly compensated. One could call it discrimination among the elite but on the face of it, the disparity is unfair and unwarranted. But it also will balkanize the judiciary into fiefdoms with separate pay levels that bestow privilege on the more fortunate. I would predict when judges gather, the talk will center around who gets what supplemental.

The House Republican Caucus I served under tried to reduce budget pressures on counties. Restricted revenue funds reimbursed counties for state-imposed obligations. (At least until surcharges were added to traffic citations to capture local money for state purposes.) That was one objective of the current judicial salary framework where the county portion has been frozen for 25 years and salary increases come from the state, as the COLA legislation in 2016 continues. **HB 4447** would shift funding pressure back to the counties for the supplementals.

Judicial Supplemental Salaries Paid by Locals – Counties (Circuit, Probate, District Court where county-funded) and Cities and/or Townships (were they fund the District Court)

One of the objectives of **HB 4447** appears to be "full-state pay" for the entire salary of trial judges, on the premise that by doing so, it would relieve counties and other court-funding units from paying their current portion of the total salary of trial judges.

There is one huge problem with that portion of **HB 4447** – because for nearly 140 years court rulings have said that such a change cannot constitutionally be done. To summarize, before recounting the history of litigation and interpretations of judicial supplemental salaries:

1. **Supplemental salaries are considered as separate and distinct entitlements once granted and a salary-fixing body cannot reduce a supplemental or additional salary during a judge's term.** (For courts with multiple judges and staggered terms: never.)

2. **A supplemental salary cannot be reduced in conjunction with an increase in the base salary nor can a salary-fixing body be absolved from paying what it has chosen to pay (contrary to what HB 4447 attempts to do).**

3. Were **HB 4447** to be enacted as introduced**, it would guarantee a pay raise of $45,724.00 to almost all circuit, probate, and district judges** because the supplemental salary for each trial court is an **obligation** that the county (or other court-funding unit for district court) has assumed, authorized, and paid and the **Legislature cannot replace the payor**.

Much of case law on supplemental salaries concerns circuit judges and the constitutional authority of counties to supplement the base salary. The Legislature and county boards have tried various mechanisms to say an increase in one justified a reduction in the other to keep total salary levels in check, but consistently those efforts were shot down. For openers:

- Rathbun v Board of Supervisors, 275 Mich 479 (1936), where the county board authorized a higher supplemental salary for the circuit judge but did not appropriate the money for it. **Judge won.**
- Denewith v State Treasurer, 32 Mich App 439 (1971). affd 385 Mich 762 (1971), where the Legislature tried to reduce the state base of circuit judges if the county supplemented more than

the Legislature wanted to allow. Court drew upon Con Con database to buttress its position that **the base salary and supplemental salaries are distinct**. **Judge won**.
- Wiedman v Wayne County, 36 Mich App 694 (1971), where Wayne County attempted to reduce the supplemental salary granted circuit judges to take into account an increase in the state-paid base salary. County argued the net result was still a pay increase. Court of Appeals said **a supplemental salary once granted cannot be reduced**. **Judge won**.
- Gillespie v Board of County Auditors of Oakland County, 267 Mich 483 (1934), where, again during the Depression and responding to curtailed tax receipts, the county board in 1933 reduce the supplemental salary of the circuit judge in Oakland County from $5,000 at the time of the plaintiff's election in 1929 to $2,000 (state base at the time being $6,000). The State Constitution in those days (1908, Art 16, Sec. 3) allowed only circuit judges among constitutional officers to receive a pay increase during their term but provided "nor shall the salary of any public officer be decreased, after election or appointment". "The mandate applies to all public officers having fixed terms **and to all salary-fixing bodies**." Id, p. 485 (emphasis added). The Supreme Court declared plaintiff had a right to $5,000 per annum "and if necessary, the writ of mandamus will issue". Id, p 487. **Judge won**.

However, related issues concerning supplemental salaries of probate and district judges have been addressed by appellate rulings and the Attorney General on several occasions:
- -Holland v Adams, 269 Mich 371 (1934), where Oakland County during the Depression tried to reduce the salary previously adopted for the justice of the peace in Pontiac. The Supreme Court held that the justice of the peace was a constitutional officer within the meaning of Const 1908. Art 18, Sec. 3, which precluded the county from changing his salary after his election". Id, p.374. The court cited Gillespie, supra, including the phrase "**all salary-fixing bodies**". Id, p.374 (emphasis added). Mandamus was granted, **Judge won**.
- A much older case, where it is not clear if the probate judge also received compensation from the state: Chapman v County of Berrien, 50 Mich 311 (1883), where the county board tried in 1875 to reduce the salary of the probate judge in mid-term from $1,500 to $1,000 on the pretext that re-enactment of a statute granted the county board a new opportunity to address salary. The Supreme Court said "no". Head note: "After the supervisors have once fixed the salary of the judge of probate, they cannot reduce it.". Id, p 311. Whatever, **judge won** (even though the case took 8 years without a Court of Appeals in between).
- **1982 OAG 6043**, p 580: AG was asked to address what happened if the county increased supplemental salaries in response to the Legislature's inducement to pay supplementals at a specified level in order to be reimbursed by Judicial Salary Standardization Payments and the Legislature later reduced or discontinued such reimbursements, AG ruled that supplemental salaries of circuit, probate, and district judges (each analyzed separately) cannot be reduced during a term of office except to the extent of a general salary reduction in other branches of government. **Judges Win**.
- **1967 OAG 4571**, p 1: If you think salaries are a conundrum now, this OAG reveals the phenomenon has a long tortured history. (The opinion cited earlier rulings concerning how probate judges get paid by state and by county. Also cited: Alcona County v Alcona Probate Judge, 311 Mich 131 (1945), refused to construe a county resolution granting a supplemental salary as "in lieu of fees", so judge got both.) This OAG involved only probate judges and only the supplemental salary. County wanted to drop its $1,500 supplemental when the Legislature increased the base salary from $6,500 to $8,000. Based upon previous rulings (citing Gillespie and Holland cases) that the Constitution prevents county boards as salary-fixing bodies from decreasing salaries during the term of office of circuit judges and justices of the peace (Id, p 3) and an earlier OAG 1951-52, p 61, standing for the proposition that probate judges are entitled to that part of the annal salary fixed by the county board "in addition to the minimum at the level established prior to the election or appointment ..." (Id, p 3), this OAG states: "Under these

decisions the constitutional prohibitions against decrease in salaries was held to apply to all public officers having fixed-terms and to all salary-fixing bodies," Id, p 4, emphasis added. Then, after drawing a distinction between Const 1908, Art 16, Sec. 3 and Const 1963, Art VI, Sec 18, OAG states; 'Such prohibitions against decreasing salaries of probate judge **must be held to apply to all salary-fixing bodies.** Article VI, Section 18 of the Michigan Constitution of 1963 bars the board of supervisor of a county from decreasing the additional compensation of a probate judge during his term, except and only to the extent of general salary reduction in all branches of government." Id, p 4, emphases added. The final conclusion is that the county board of Menominee County could not reduce the additional salary it has fixed for the probate judge. **Judge won.**

Based upon this extensive history of interpretation of supplemental judicial salaries, conclusions are inescapable: **Supplemental salaries are considered as separate and distinct entitlements once granted and a salary-fixing body cannot reduce a supplemental or additional salary during a judge's term.** That is the consistent interpretation of **Art VI, Sec. 18**, (and its 1908 predecessor). as to judicial salaries for Supreme Court, Court of Appeals, Circuit Court, and Probate Court. Statutorily, MCL 600.8202(5) has a non-reduction provision for District Court like Art VI, Sec. 18(1) for Circuit. (That principle is extended in MCL 600.821(5) and 600.822(2) with respect to probate judges to the degree that the reduction clause in both sections is not linked to the end of a term but rather is conditioned only upon a general reduction in other branches of government.) **Ergo, a supplemental salary cannot be reduced in conjunction with an increase in the base salary nor can a salary-fixing body be absolved from paying what it has chosen to pay (contrary to what HB 4447 tries to do).**

This is an area of law that has generated an unusually high number of rulings spanning more than a century. Attempts to reduce judicial supplemental salaries have consistently failed. Judges habitually challenge those attempts – and they win. **In every instance, the judge won**.

If HB 4447 becomes law as written, I foresee a successful challenge by judges (all it takes is one) to require the county (and other court-funding units) to continue to pay the supplemental salary that exists today – $45,724 – in addition to the full amount they would receive as a total salary from that state under this bill, plus any additional supplemental counties (and other court-funding units) may grant to its judge or judges. That would raise salaries of circuit and probate judges almost to $201,000 and district judges a nudge over $199,000. Judges win again?

Examples of the additional burden counties may incur are as follows:

Wayne County: **$2,926,336** (56 circuit, 8 probate judges = 64 x $45,724).
Oakland: **$1,508,892** (19 circuit, 4 probate, 10 district = 33 x $45,724).
Kent: **$914,480** (14 circuit, 4 Probate, 2 district = 20 x $45,724).
Livingston: $274,344 (3 circuit, 1 probate, 2 district = 6 x $45,724).

For the reasons stated above, I strongly **oppose HB 4447** and urge the Committee to not proceed further with this ill-advised bill.

Respectfully,

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