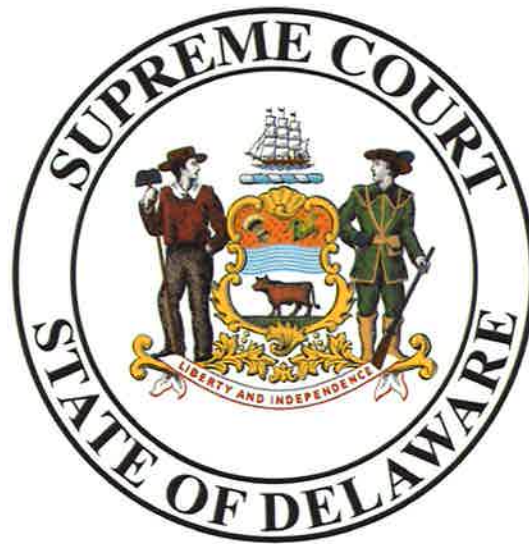


THE DELAWARE JUDICIARY'S PRESENTATION  
TO THE  
DELAWARE COMPENSATION COMMISSION

DECEMBER 12, 2016



# Introduction

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- Delaware Judiciary serves as a foundation to Delaware's leading industry – the formation of business entities and the provision of legal services.
- Delaware Judiciary plays a key role in attracting business entities and related economic activities and revenue to Delaware.
- Delaware judges are renowned and well-respected nationally and internationally.

*“Delaware’s courts are a key feature contributing to Delaware’s reputation and brand. It has one of the most important judiciaries in the country, functioning as a de facto national regulator of publicly traded corporations...”*

Omari Scott Simmons, *Delaware’s Global Threat*, 41 J. Corp. L. 246, 263 (2015)

## Economic role of the Delaware judges makes them uniquely important to Delaware and distinct from judiciaries in other states

- Delaware Judiciary plays vital role in attracting businesses to Delaware.
- State General Fund revenues generally attributable to Delaware corporations and other business entities exceeded \$1.9 billion for FY 2015.
- This represented 43% of the State's revenue in FY 2015.
- This does NOT INCLUDE the SUBSTANTIAL INCOME TAXES paid by legal services employees and the revenues generated by providing customers for other businesses like hotels, restaurants, etc.

# Commentators' views on the important role of the Delaware Judiciary

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- “The Delaware courts, termed “the Mother Court[s] of corporate law,” have decided most major corporate law cases in the United States, and courts in other states have often applied Delaware precedents to non-Delaware corporations.”

*John Armour, Bernard Black, & Brian Cheffins, Delaware's Balancing Act, 87 IND. L. J. 1345, 1345-46 (2012)*

- “Apart from the Justices on the United States Supreme Court, it is hard to imagine that any judges in our country receive closer scrutiny than those serving on Delaware's courts. This is due to their central role, historically, in expounding on corporate law and, more recently, in fleshing out the law of non-corporate business entities.”

*Lyman Johnson, Unsettledness in Delaware Corporate Law: Business Judgment Rule, Corporate Purpose, 38 DEL. J. CORP. L. 405, 406-07 (2013)*

# Important role of the Delaware Judiciary in the Corporate World

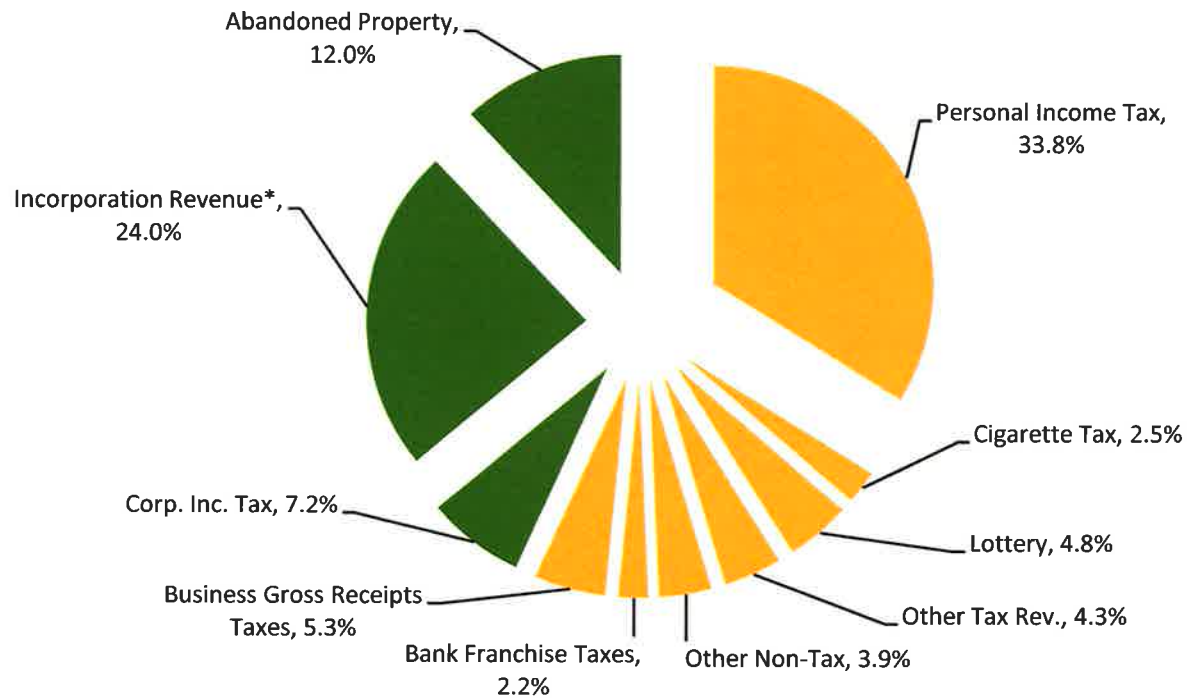
➤ “The institutional prestige of the Delaware Court of Chancery has never been higher. . . . Academics and practitioners alike have been impressed by both the depth and thoughtfulness of the Court of Chancery's decisions and the hardworking style of its vice chancellors (who regularly seem able to turn out lengthy decisions in days that would take many federal circuit courts months and even years to complete).”

*John C. Coffee, Jr., Foreword: The Delaware Court of Chancery: Change, Continuity – and Competition, 2012 COLUM. BUS. L. REV. 387 (2012)*

➤ “Delaware's leadership in corporate law is not just the result of its well-established body of precedent, its highly regarded judiciary, or its supposed tilt (or lack thereof, depending on one's viewpoint) toward management or investors. Delaware's bench also has the advantages of having so many opportunities to address critical corporate law issues, the certainty of immediate and sustained scrutiny and feedback from lawyers and scholars, and the deft lever of equity that permits judges, as a lawmaking mechanism, to stand between the categorical edicts of a legislative/regulatory state and pure, unconstrained private ordering.”

*Lyman Johnson, Unsettledness in Delaware Corporate Law: Business Judgment Rule, Corporate Purpose, 38 DEL. J. CORP. L. 405, 408-09 (2013)*

# FY 2015 STATE OF DELAWARE REVENUE SOURCES (JUDICIARY-RELATED IN GREEN)



\*Includes Corporate Franchise Taxes, Business Entity Fees, Limited Partnerships and Limited Liability Corporations, and UCC filings.

## Courts and legal services industry support the vitality of Delaware and its communities

- The Courts and the legal industry have a multiplier effect on the Delaware economy.
- The Courts and law firms serve as the “hub” of downtown communities.
- Law firms fill downtowns – including Wilmington – office buildings and stabilize those communities and provide good jobs, paying income and other taxes.
- Law firms use accountants, copy services, delivery services, restaurants and caterers in Delaware.
- Out-of-town lawyers coming to litigate in Delaware Courts fill hotel rooms, rent temporary office space and support downtown restaurants.

## Benefit of Delaware Judiciary to State Revenue Far Outweighs Cost – FY 2015

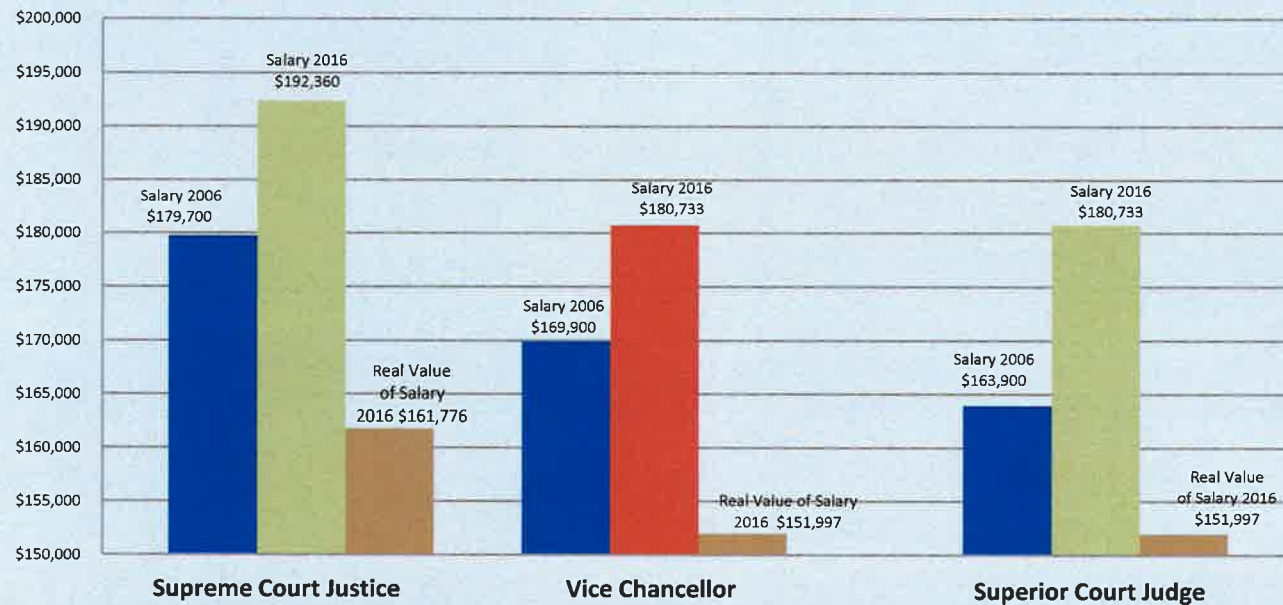


**Delaware Courts represent 2.36% of the total FY 2017 state general fund appropriations and contribute towards over 40% of state revenue.**



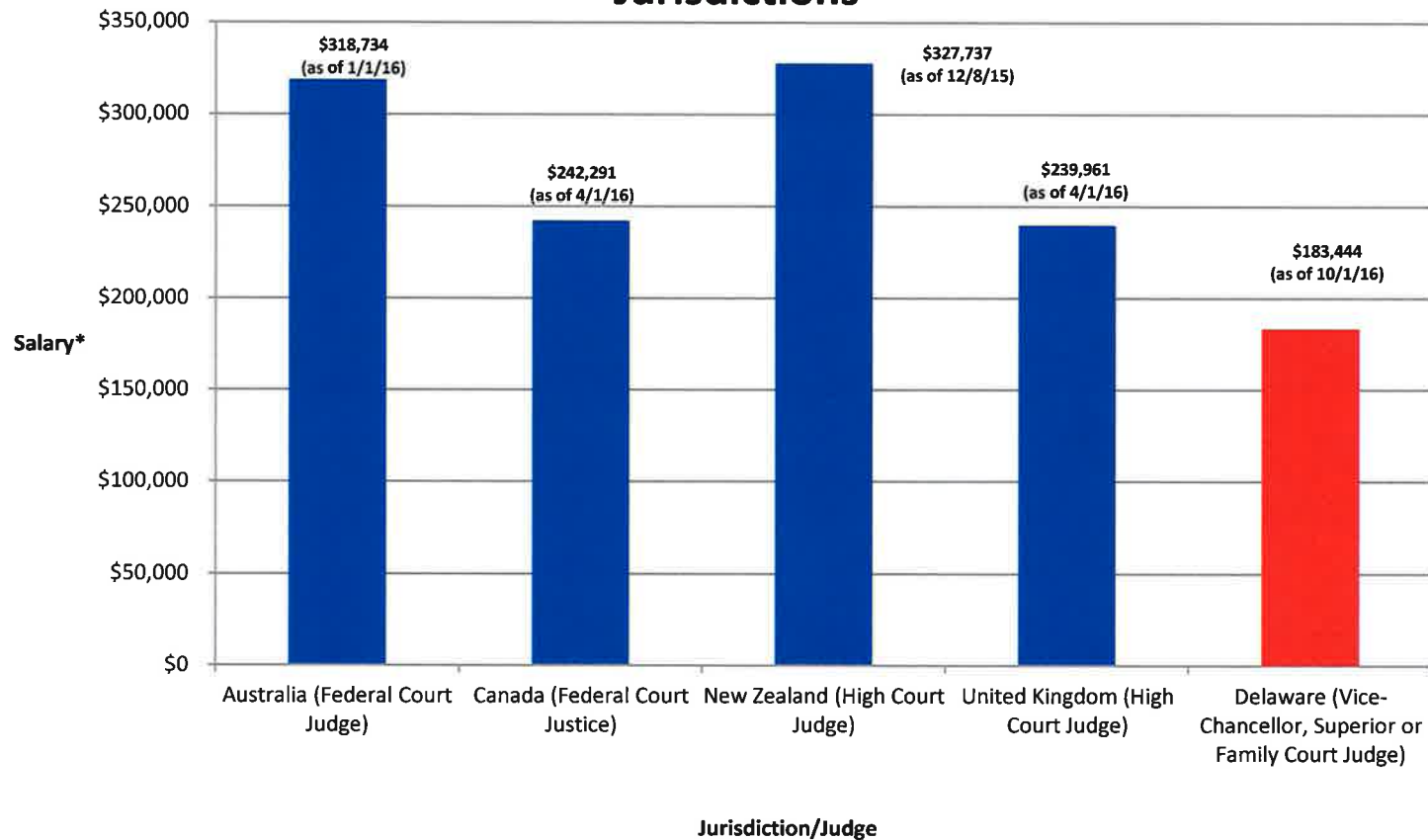
# Delaware Judges' Salaries Have Fallen Behind Inflation

Decreasing Judicial Compensation with Inflation



# Delaware Judiciary Salaries – FAR BEHIND COMPARABLE JUDGES INTERNATIONALLY

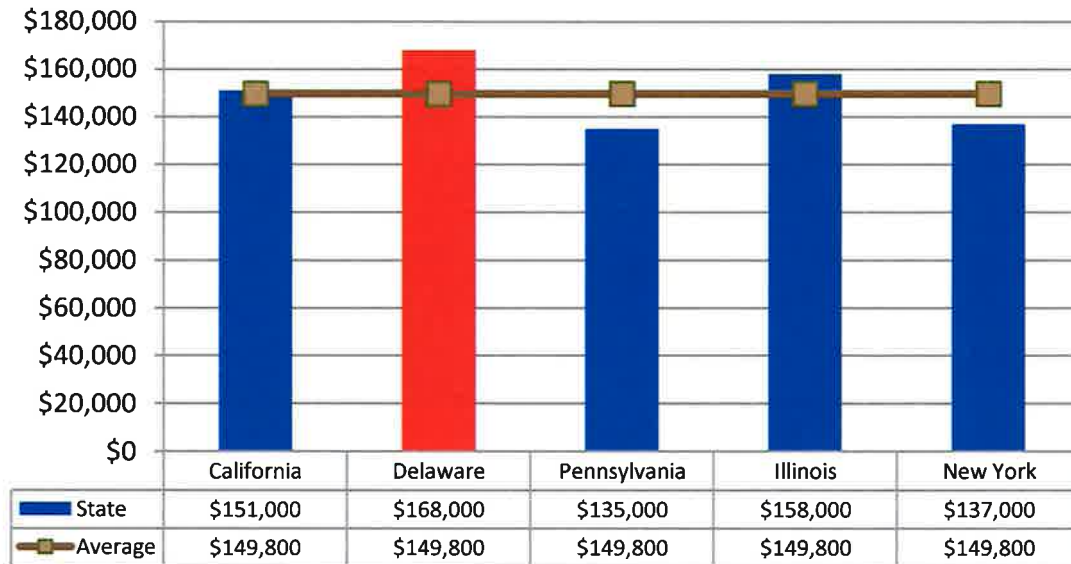
## Comparable Compensation: International Common Law Jurisdictions



\*Salaries converted to USD as of 8/29/16.

# Delaware Judiciary Salaries – Losing Ground Compared to other Judges

## Comparison of Judicial Salaries\* for Commercial Litigation Jurisdictions (as of July 1, 2006)

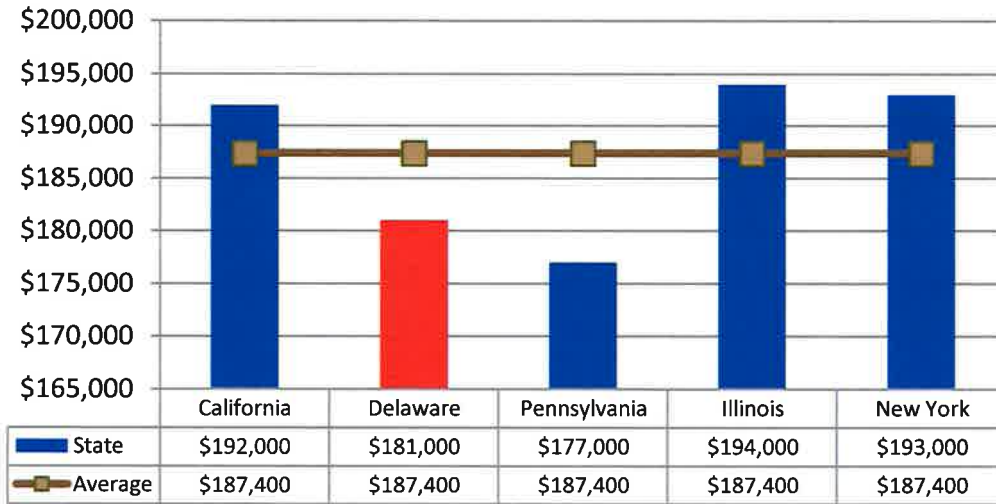


\*General jurisdiction judges' salaries.

**Delaware judges were compensated similarly to judges in other commercial litigation jurisdictions in 2006.**

# Delaware Judiciary Salaries – Losing Ground Compared to other Judges

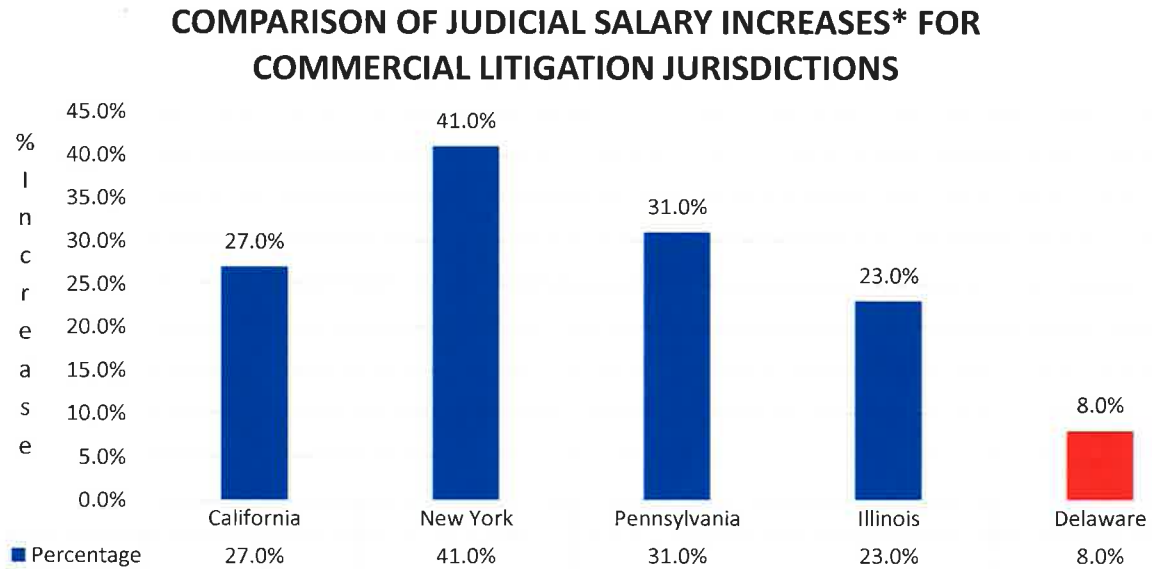
**Comparison of Judicial Salaries\* for Commercial Litigation Jurisdictions (as of July 1, 2016)**



\*General jurisdiction judges' salaries.

**By 2016, Delaware judges' salaries have dropped materially as compared to other commercial litigation jurisdictions.**

# Delaware Judiciary Salaries – Losing Ground Compared to other Judges

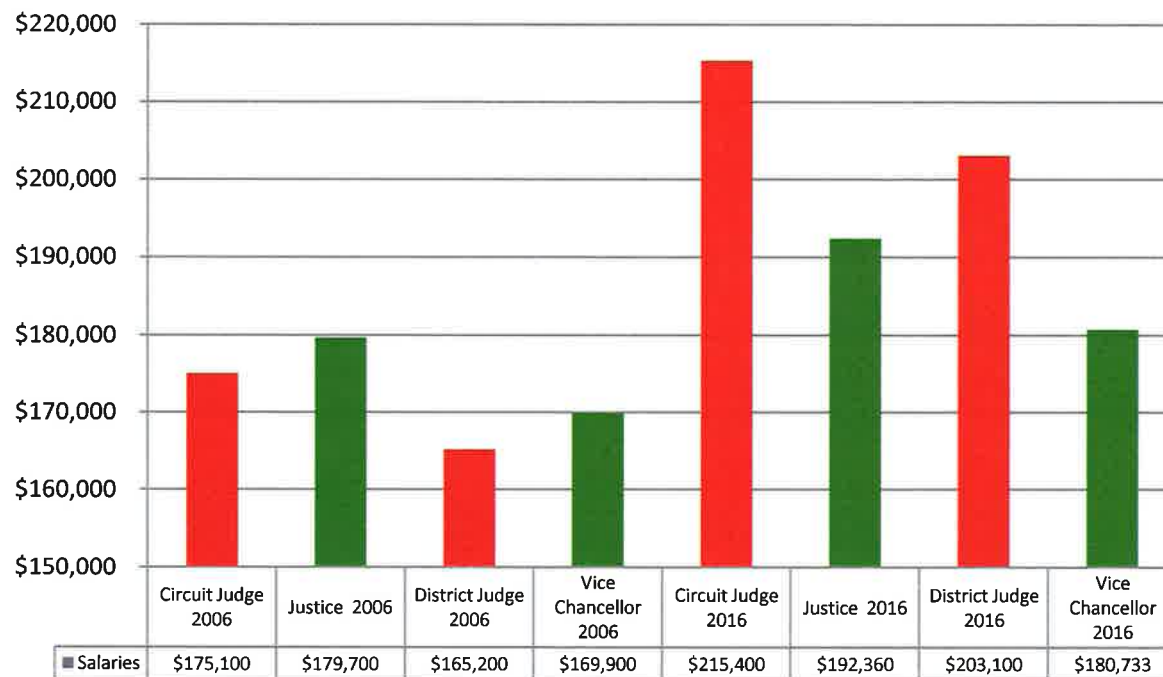


\*Compensation comparisons are for general jurisdiction court judges reflecting salary changes between July 1, 2006 and July 1, 2016.

**Between 2006 and 2016, Delaware judges' salaries have fallen far behind those of judges in comparable jurisdictions.**

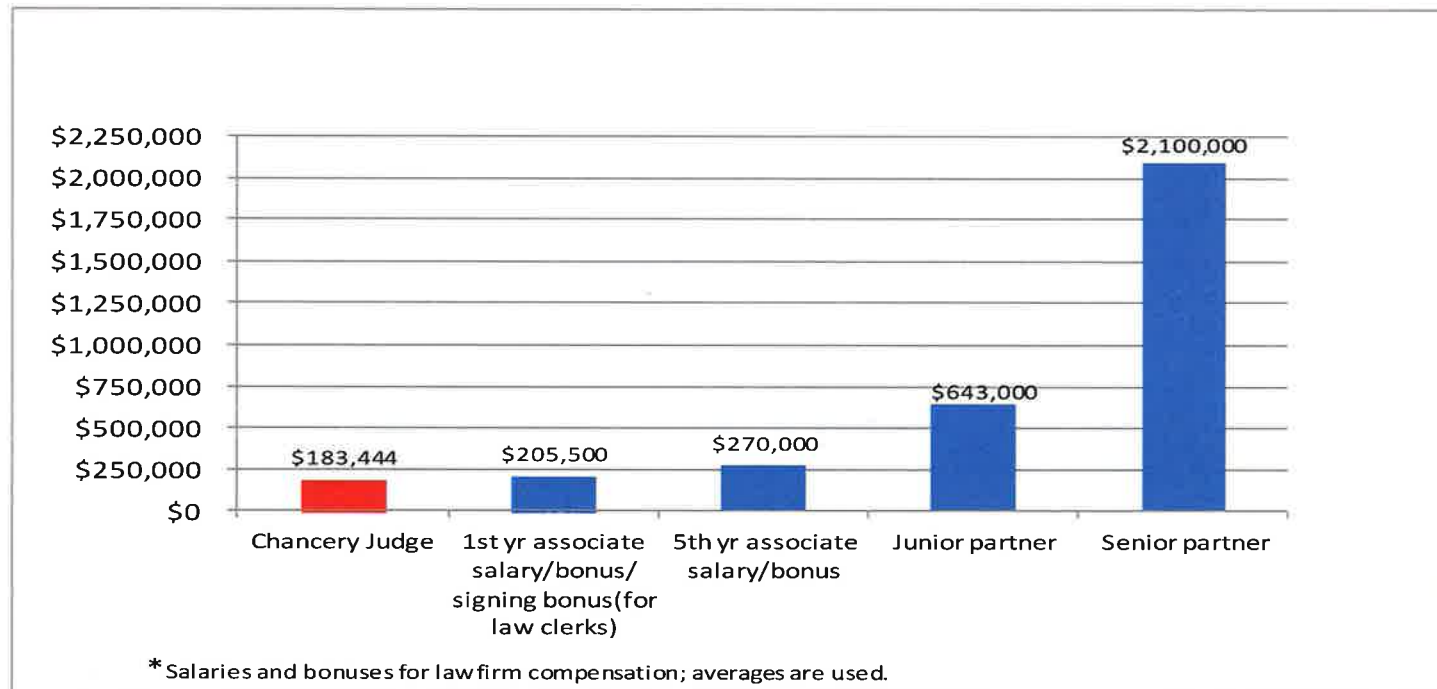
# Delaware Judiciary Salaries – Losing Ground Compared to other Judges

## LOSING GROUND RELATIVE TO THE FEDERAL BENCH



**In 2006, a member of the Delaware Supreme Court earned roughly the same compensation as a federal court of appeals judge. The trial judges' compensation was also comparable. That is no longer true.**

## Comparable Compensation with Major Delaware Law Firms



**Delaware judges often make less than their former law clerks do – even when their former law clerks are first year associates.**

# WHY DELAWARE JUDGES' SALARIES SHOULD BE INCREASED

- The Delaware Judiciary plays a fundamental role in the lives of Delaware citizens and serves as the gateway for access to justice for all Delawareans.
- The Judiciary plays a key role in attracting business entities to Delaware which strengthens communities and is a substantial revenue generator for the State.
- Judicial salaries have lagged far behind inflation and comparative salaries – particularly federal judges and judges in other commercial litigation states.



# PROPOSED JUDICIAL SALARY PLAN

Considering comparable judges' salaries – specifically federal judges and those in major commercial litigation jurisdictions – the following salary changes are recommended:

- Increase the salaries of the Justices to that of federal circuit court judges (as of 2016) in two steps over two years (representing a 5.15% increase on July 1, 2017 and a similar increase on July 1, 2018), with the Chief Justice's salary being set proportionally (5%) higher, given his administrative responsibilities.
- Keep the \$500 differential in place between the Chief Judges of the Court of Chancery, Superior Court, and Family Court and the Supreme Court Justices, paying those Chief Judges \$500 less than the Justices.
- Match the salaries of the judges in the Court of Chancery, Superior Court, and Family Court to those of federal district court judges (as of 2016) in two steps over two years (representing a 5.35% increase on July 1, 2017 and a similar increase on July 1, 2018).

# PROPOSED JUDICIAL SALARY PLAN

(CONTINUED)

- Increase Court of Common Pleas' judges' salaries to make them equal to a federal magistrate's salary (as of 2016) in one step (representing a 5.5% increase on July 1, 2017), and bring the Chief Judge of the Court of Common Pleas' salary to the same percentage above CCP judges' salaries as the other chief judges are higher than their courts (representing a 5.6% increase on July 1, 2017).
- Set as a goal to increase the salary of the Chief Magistrate to reach the amount of a federal magistrate's salary, bring his salary up to the maximum amount allowable (120%) through the Compensation Commission process in two steps over two years (10% each year).
- Increase the salaries of Superior Court and Family Court Commissioners to equal the salary of the lowest pay level of federal administrative law judges located in Delaware (as of 2016) in two steps over two years (representing a 7.65% increase on July 1, 2017 and a similar increase on July 1, 2018), and increasing the CCP Commissioners' salaries comparably (to bring them to 95.8% of other Commissioners' salaries – representing a 7.2% increase on July 1, 2017 and a similar increase on July 1, 2018).

# PROPOSED JUDICIAL SALARY PLAN

(CONTINUED)

- Level up the third term Justice of the Peace Court Magistrates' salaries commensurate with deputy attorney general IV or public defender IV positions (75% of midpoint), and increase the salaries for first and second term magistrates to maintain the current percentage differential with the third term magistrates.

*These increases are based conceptually upon federal judges' salaries as of 2016, but they would lag behind federal judges' salaries at the time of implementation because federal judges receive cost-of-living adjustments each year.*

*Any increase provided to state employees through the statewide general salary policy would supplement the proposed increases.*

## PROPOSED JUDICIAL SALARIES

	FY 2017* Salary	Salary w/ 1st Increase	Salary w/ 2nd Increase	%Increase/yr	Description
<b>Chief Justice</b>	\$204,148	\$215,589	\$226,708	5.5%	Federal Circuit Court judge salary (as of 2016), plus 5%
<b>Justices</b>	\$195,245	\$205,323	\$215,400	5.15%	Federal Circuit Court judge salary (as of 2016)
<b>Chancellor</b>	\$194,738	\$204,819	\$214,900	5.15%	Federal Circuit Court judge salary (as of 2016) - \$500
<b>Vice-Chancellors</b>	\$183,444	\$193,272	\$203,100	5.35%	District Court judge salary (as of 2016)
<b>President Judge</b>	\$194,738	\$204,819	\$214,900	5.15%	Federal Circuit Court judge salary (as of 2016) - \$500
<b>Superior Court Judges</b>	\$183,444	\$193,272	\$203,100	5.35%	District Court judge salary (as of 2016)
<b>Family Court Chief Judge</b>	\$194,738	\$204,819	\$214,900	5.15%	Federal Circuit Court judge salary (as of 2016) - \$500
<b>Family Court Judges</b>	\$183,444	\$193,272	\$203,100	5.35%	District Court judge salary (as of 2016)
<b>CCP Chief Judge</b>	\$192,541	\$203,378	\$203,378	5.6% total	Salary should be same percentage higher than CCP Judges as other chief judges are higher than their courts (5.8% higher); increase implemented fully in 2018
<b>CCP Judges</b>	\$177,066	\$186,852	\$186,852	5.5% total	Salary should be equal to federal magistrate salary (as of 2016); increase implemented fully in 2018
<b>Chief Magistrate</b>	\$127,816	\$140,598	\$153,379	10%	Salary should be equal to federal magistrate salary (as of 2016); bring up to 120% increase maximum with this Compensation Commission

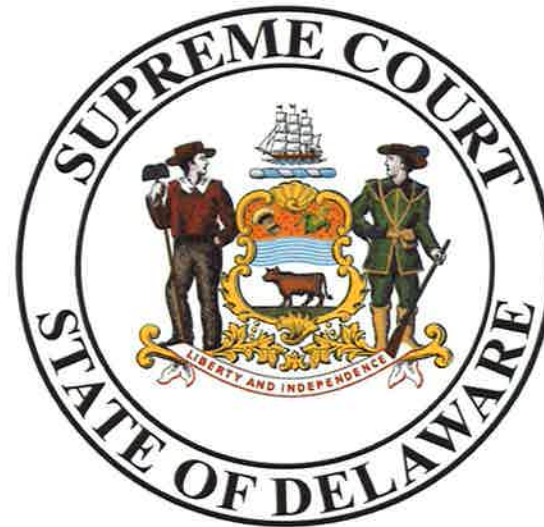
## PROPOSED JUDICIAL SALARIES

	FY 2017* Salary	Salary w/ 1st Increase	Salary w/ 2nd Increase	%Increase/yr	Description
<b>Superior Court Commissioners</b>	\$113,452	\$122,114	\$130,775	7.65%	Salary equal to lowest pay level of federal ALJ judges located in DE
<b>Family Court Commissioners</b>	\$113,452	\$122,114	\$130,775	7.65%	Salary equal to lowest pay level of federal ALJ judges located in DE
<b>CCP Commissioners</b>	\$109,516	\$117,399	\$125,282	7.2%	95.8% of other Commissioners' salary
<b>Magistrates – 3rd term</b>	\$79,507	\$81,731	\$83,955	2.8%	Salary set at 75% of midpoint of A18 (deputy attorney general IV or public defender IV) position
<b>Magistrates – 2nd term</b>	\$77,101	\$79,226	\$81,353	2.75%	3 <sup>rd</sup> term magistrate salary minus 3.1% (current difference between 2 <sup>nd</sup> and 3 <sup>rd</sup> term magistrate)
<b>Magistrates – 1st term</b>	\$74,488	\$76,497	\$78,506	2.7%	2 <sup>nd</sup> term magistrate salary minus 3.5% (current difference between 1 <sup>st</sup> and 2 <sup>nd</sup> term magistrate)

\*Salaries effective on 10/1/16.

THE DELAWARE JUDICIARY'S PRESENTATION TO  
THE  
DELAWARE COMPENSATION COMMISSION

DECEMBER 12, 2016



# IMPACT OF THE DELAWARE TRIAL COURTS

## COURT OF CHANCERY

- The Court of Chancery is a trial court of equitable jurisdiction. It serves two major constituencies: individual residents and entities incorporated in Delaware.
- For individuals and local businesses, the Court's jurisdiction includes guardianships, estate matters, and a variety of commercial and real property disputes.
  - In FY 2016, the Court's docket included 1,968 open adult guardianship cases, and 1,221 open minor guardianship cases involving property.
  - The Court handles matters arising out of probate proceedings filed in each county's Register of Wills. In FY 2016, 2,649 probate cases were opened.
- Entity formation is vital to Delaware's economy:
  - Over 1 million entities are incorporated in Delaware, including more than half of U.S. publicly traded companies and approximately 64% of the Fortune 500.
  - In FY 2015, incorporation revenue and abandoned property revenue accounted for approximately 24% and 12%, respectively, of the State's revenues.
  - Delaware entity status fuels a vibrant legal industry centered in Wilmington that consists of scores of law firms and thousands of highly-compensated legal professionals who handle cases in the Court of Chancery as well as bankruptcy and intellectual property cases in the federal courts, and who provide transactional services to Delaware entities throughout the country.

# IMPACT OF THE DELAWARE TRIAL COURTS

## COURT OF CHANCERY (*continued*)

- The judges serving on the Court of Chancery are critical to preserving and expanding Delaware's corporate franchise.
  - The Court is widely recognized as the nation's preeminent forum for resolving corporate and complex commercial disputes, including M&A transactions and other high-stakes matters.
  - The body of law the Court produces is the gold standard that shapes corporate practice throughout the United States and in many other countries.
  
- The five members of the Court have a reputation for excellence in resolving sophisticated matters conscientiously, predictably, and efficiently. Their services are in high demand and the demands on their time are extensive:
  - The Court's civil action docket, which consumes the vast majority of the judges' time and attention, increased approximately 64% over the past ten years, from 828 filings in FY 2007 to 1,356 filings in FY 2016.
  - A high percentage of each judge's docket consists of expedited proceedings that impose significant time pressures, such as challenges to corporate office, advancement proceedings, TRO's, and preliminary injunctions.
  - Integral to promoting the Delaware corporate franchise, the Court's members frequently speak at corporate law programs sponsored by professional organizations and academic institutions throughout the country, and periodically serve as mediators for each other's cases.



# IMPACT OF THE DELAWARE TRIAL COURTS

## **SUPERIOR COURT**

- The Superior Court is the trial court of general jurisdiction, including all criminal cases and a broad array of civil cases, such as breach of contract, complex commercial litigation, medical malpractice, mortgage foreclosure, and personal injury. It hears appeals from the Court of Common Pleas and various state agencies, boards and commissions.
- The Superior Court is currently adjudicating over 7,500 civil cases and over 700 criminal cases, including 96 first degree murder cases. In FY 2016, over 11,000 civil cases and 6,000 criminal cases were filed, with 83 representing Class A felony cases and 499 representing Class B felony cases.
- The Court generates significant revenue for the State. In FY 2016, the Court collected close to \$4 million in costs, fees, fines and assessments.
- The Court orders the forfeiture of money and guns used by defendants in criminal cases thereby providing much needed resources to law enforcement and preventing their use in further criminal activity.

# IMPACT OF THE DELAWARE TRIAL COURTS

## **SUPERIOR COURT** *(continued)*

- The Complex Commercial Litigation Division of the Superior Court is currently adjudicating over 100 complex commercial cases involving amounts in controversy of over \$1M. This Division complements Court of Chancery jurisdiction by affording businesses an attractive forum in which to prosecute claims for money damages. Many of the businesses filing such cases are Fortune 500 companies. These cases also generate revenue for Delaware hotels, restaurants, copy centers, transportation companies and courier services.
- The Court has instituted statewide “problem-solving” courts such as Veterans Treatment Court and Mental Health Court in an effort to reduce recidivism and improve outcomes for individuals struggling with severe and persistent mental illness and/or addiction. The Court has and will continue to collaborate with the Court of Common Pleas on Adult Drug Court, a program designed to divert individuals with addiction into treatment and away from the criminal justice system.

# IMPACT OF THE DELAWARE TRIAL COURTS

## **SUPERIOR COURT (*continued*)**

- The Superior Court will be introducing in the next few months new technology which will ease the burden placed on the hundreds of Delaware citizens summoned each year for jury service. This technology will enable prospective jurors to reschedule jury service quickly and efficiently online.
- The Court is collaborating with other State agencies on multiple projects in an effort to improve Court processes, increase our efficiency, utilize our resources smartly, and improve access to, and delivery of, justice for all.
- The 21 judges of the Superior Court preside over hundreds of criminal and civil proceedings each year, including trials, motions, sentencings, suppression hearings, violation of probation hearings, and competency hearings, and issue thousands of written opinions and orders.

# IMPACT OF THE DELAWARE TRIAL COURTS

## FAMILY COURT

- Family Court's criminal, delinquency and civil jurisdiction is comprehensive and touches almost all legal issues related to families, parents and children. The Family Court received 49,000 filings and issued 48,000 dispositions in FY 2016.
- The highest volume of cases in Family Court is for child support. The Court works closely with the Division of Child Support Services (DCSS) to accurately and efficiently collect money that provides support for children in Delaware, including the handling of arrears cases to enforce child support orders. The Court works with DCSS and the Department of Correction to assist child support obligors in finding employment so they can meet the legal obligation to their children.
- A high percentage of litigants access Family Court without legal representation. Family Court provides *pro se* litigants resources in self-help centers in each courthouse and on the Court's website.

# IMPACT OF THE DELAWARE TRIAL COURTS

## **FAMILY COURT** (*continued*)

- For those indigent litigants requiring legal representation in matters that could lead to incarceration or loss of parental rights, the Court appoints representation through contract attorneys, court-appointed attorneys, and collaborates with the Office of the Child Advocate (OCA) on various initiatives to encourage *pro bono* legal representation.
- Through the Court Improvement Project (CIP), Family Court has implemented best practices for handling dependency and neglect cases to allow children to return home to their parents when appropriate or to achieve permanency for children who are unable to return to their parents' home.
- Family Court judicial officers have traditionally taken a leadership role to collaborate with the Court's partner agencies such as the Department of Services for Children, Youth and their Families, the Department of Justice, and the Office of Defense Services to reduce the juvenile population in detention centers, provide programming for juveniles in facilities, and address the issue of disproportionate minority confinement.

# IMPACT OF THE DELAWARE TRIAL COURTS

## COURT OF COMMON PLEAS

- The Court of Common Pleas is a misdemeanor trial court with limited appellate jurisdiction. Its jurisdiction includes civil actions that do not exceed \$50,000 and criminal misdemeanors (except certain drug-related offenses) and motor vehicle offenses (except felonies). The Court is responsible for preliminary hearings in felony offenses and hears appeals from the Justice of the Peace Court, Alderman's Courts, and the Division of Motor Vehicles.
- For FY 2015, filings in the Court of Common Pleas included 103,176 criminal filings, 6,507 civil complaints and 3,788 civil judgements, name changes and appeals, along with 8,621 preliminary hearings.
- The Court has made significant changes over the last several years to achieve the Court's goal of efficient case management to ensure timely and quality delivery of services to its customers. For example, all notices from the Court appear in both English and Spanish, and court documents often are in both English and Spanish.

# IMPACT OF THE DELAWARE COURTS

## COURT OF COMMON PLEAS (*continued*)

- Other recent case management improvements include a case calendaring method designed to address cases quickly (within eight months of the filing of the responsive pleading in civil cases) and to minimize the number of times a party has to appear in court.
  - The Court has developed sample pleading forms for *pro se* litigants, which are available on the Court's website, and notices in consumer debt actions that explain the procedures for those cases. It has implemented a fast track process for personal injury claims (piloted in Kent County).
  - For criminal cases, the Court coordinates with police officers' schedules when calendaring DUI cases and motions, instituted a procedure allowing for court payments by phone or at kiosks, developed treatment courts to address substance abuse issues, and is working on an automated system providing basic case information by phone.

# IMPACT OF THE DELAWARE TRIAL COURTS

## JUSTICE OF THE PEACE COURT

- The Justice of the Peace Court has jurisdiction over civil cases that do not exceed \$15,000, and over certain misdemeanors. It has exclusive jurisdiction for red light camera offenses, ordinance violations, civil marijuana offenses, most traffic charges and landlord-tenant cases. Nearly every criminal case – from dog licensing to murder – begins in the Justice of the Peace Court, with its judges reviewing search and arrest warrant applications and making initial bail determinations in almost all of the criminal cases in Delaware.
- The Justice of the Peace Court processed more cases than all other Delaware Courts combined in FY 2015 – its 283,003 cases constituted 61% of the entire Judiciary's cases.
  - At 4,177 cases per judge, only CCP had a higher caseload.
  - With 32,381 civil cases, it far surpassed all but Family Court in civil filings.
- The Court is innovating its way to a more effective and efficient handling of its caseload and promoting a culture of embracing change and seeking improvements.



# IMPACT OF THE DELAWARE TRIAL COURTS

## JUSTICE OF THE PEACE COURT (*continued*)

- Some of the significant projects and processes over the years that have reduced the need for additional resources:
  - Delaware's first automated criminal case management system.
  - Voluntary Assessment Center for public convenience.
  - Statewide Videophone Court – yearly cost avoidance >\$10M.
  - Electronic traffic ticket issuance and online payment options.
  - Police Prosecution Process – avoiding need for transfers to CCP.
  - JP Court Information Center – resolves 89% of all calls to court locations.
  - Adopted procedural fairness tenets; incorporated into all aspects of training.
- JP Court Judges are well-educated, professional standard-bearers of the Judiciary.
  - 13% of current judges have law degree or are members of a Bar; other previous professions of JP Court judges include bankers, entrepreneurs, a former Navy Captain, a former Federal Inspector General, educators and broad representation in the overall criminal justice community.
  - Multi-dimensional Basic Legal Education training is required before judges take bench, and Continuing Legal Education requirements for sitting JP Court judges surpass those of Delaware attorneys.