

PUBLIC OFFICIALS COMPENSATION COMMISSION

REMARKS OF THOMAS A. BALMER
ASSOCIATE JUSTICE, OREGON SUPREME COURT

Good morning. My name is Tom Balmer, and I'm appearing before you on behalf of Chief Justice De Muniz and my other colleagues on the Supreme Court. My purpose is to describe briefly the role of the Supreme Court in the Oregon judiciary -- who we are and what we do; to present to you the Chief Justice's 2008 Report on Judicial Compensation; and then to answer any questions that you have, which I propose to do after the representatives of our other courts have made some brief remarks.

The Oregon Supreme Court traces its roots back to 1841, when a meeting of settlers of the Willamette Valley elected Dr. Ira Babcock as a "supreme judge with probate powers;" judges were later selected under the provisional government and then, after 1848, a formal territorial Supreme Court was established for the Oregon Territory. The Oregon Constitution in 1857 created a Supreme Court of four (and later five) members -- those judges heard and decided appeals and also rode circuit, serving as trial judges around the state. In 1878, the trial and appellate court responsibilities were separated, and the five justices of the Supreme Court thereafter served only as appellate court. The number of judges was increased to seven in 1913 and has remained at that number ever since.

The justices are elected statewide and, like other Oregon judges, serve six-year terms. The members of the Court elect a Chief Justice from among their number,

and that person serves as the administrative head of the entire judicial branch. Supreme Court judges come from a variety of backgrounds -- some of our current members have worked as prosecutors or criminal defense lawyers; several spent most of their years in practice working for private law firms; others held significant positions in the Oregon Department of Justice. Five members of the current court served on the Court of Appeals, while two came to the job directly from private law practice. Our members have an average of over 32 years of legal experience and an average of over 13 years' experience as judges.

The Supreme Court is the final word in the interpretation and application of Oregon law. We have the ultimate responsibility to determine the meaning of the Oregon Constitution, statutes, and regulations. Whether it is Oregon's constitutional free speech or jury trial provisions, an anti-discrimination law, the statutes that make up the public employee retirement system, or the legal limits on medical malpractice claims, our job is to interpret and articulate Oregon law. We try to do that consistently with constitutional and statutory requirements and in a way that provides guidance for the Court of Appeals and the circuit courts, for law enforcement and other public officials, for business, and for the public at large. If a case involves a federal issue, a losing party may ask the United States Supreme Court to review one of our decisions, but that is a rare event -- at most, the U.S. Supreme Court might consider one or two of our cases in a year.

Cases come to the Oregon Supreme Court in three ways. The Court, like the United States Supreme Court, is primarily a court of discretionary review -- most of

our cases have already gone through the Court of Appeals, and they come to us when the losing party files a petition for review asking us to reverse the Court of Appeals decision. We receive and review over 1,000 petitions each year, and we allow review in between five and ten percent of those cases. In 2007, we received 1,286 petitions and allowed review of 84, for an allow rate of 6.5 percent. When we take a case on review, we receive and read briefs from the parties and, often, from other interested groups; hold oral arguments where the parties' lawyers present their case and we ask questions; and we then produce a written opinion explaining our ruling in the case.

We generally allow review of those cases that we think will have broad impact over the state as a whole -- for example, a case interpreting a new and significant constitutional amendment; a statute that applies to many people or transactions; or a case that involves an important dispute between state and local government or different branches of government. A critical part of our work is reviewing those thousand or more petitions and deciding which cases to accept for decision. The Supreme Court is, principally, a "law-announcing" court, and we allow review in cases that will allow us to announce law on matters important to Oregonians and the lower courts.

The second major part of our docket consists of cases that the legislature has determined should be appealed directly from the circuit court or another tribunal to the Supreme Court, rather than going first to the Court of Appeals. Aggravated murder cases in which the death penalty is imposed, appeals from the Tax Court, and appeals in lawyer disciplinary matters are examples of such "direct" appeals.

Finally, we have "original" jurisdiction over certain disputes -- where a party begins the case by filing it directly in the Supreme Court. Ballot title challenges are the most numerous of those, but we also have original jurisdiction over challenges to legislative reapportionment, writs of mandamus and habeas corpus, and other cases where the legislature chooses to have the case filed directly with the Supreme Court, as it did in the challenges to the legislature's PERS amendments in 2003. But our "original" jurisdiction cases, except for ballot title challenges, are rare, and most of the 70 to 100 cases that we decide and write opinions in each year are cases that come from the Court of Appeals.

I hope that gives you some idea of what the Supreme Court does and how we do it. Before I turn the microphone over to Chief Judge Brewer to talk about the Court of Appeals, I would like to deliver copies of the Chief Justice's 2008 Report on Judicial Compensation. Chief Justice De Muniz very much wanted to be here this morning to deliver his report and speak to you again in person, but he is presiding over a previously scheduled, multi-day felony trial in Lakeview.

I am not going to go over the data and the background information in the Chief Justice's Report, but I want to say just a few words to orient you as to what's in the Report. The Report begins with an introductory message that outlines the constitutional and societal significance of judicial compensation, both historically and currently. It then discusses both the legal and, more significantly, the practical, qualifications to be a judge in Oregon and provides an overview of the Oregon judicial system. From there, the

report provides information concerning judicial compensation in Oregon, both in terms of salary and otherwise. Following that there are analytical comparisons of judicial salaries in Oregon to judicial salaries both nationally and regionally, as well as a comparison against the salaries paid to lawyers at different levels in private practice and senior lawyers in public practice and other public officials. Finally, the Chief Justice shares some of his concerns about the impact that the issue of judicial pay in Oregon is beginning to have on the judicial branch of government. He, of course, welcomes any comments or further questions you might have after you've had a chance to review the report.

With that, let me thank you for your consideration, and I will now yield to Chief Judge Brewer.