

STATE PENSIONS AUGMENT SOME FEDERAL JUDGES' FINANCES, REPORTS SHOW

by MARY ALICE ROBBINS

State pensions supplement the income of eight Texas judges who currently sit on federal district courts or the 5th U.S. Circuit Court of Appeals. That's according to 71 judges' 2009 financial disclosure reports reviewed by *Texas Lawyer*.

Senior U.S. District Judge James Nowlin of the Western District of Texas in Austin reported receiving \$39,219 in 2009 for his service in the Texas House from 1967 to 1981. However, he doesn't use that money for his own benefit.

"The truth is I give most all of that legislative check and my Social Security [check] to scholarships," Nowlin says.

Nowlin says he took senior status in 2003 and qualifies for federal judicial retirement benefits. His state retirement and Social Security benefits provided him with surplus funds, Nowlin says, noting that he has used that money to help four or five students who otherwise might not be able to go to college.

"My view is that when you've got more than you need, you ought to help somebody in need,"

he says.

The Ethics in Government Act requires all federal judges to disclose sources and amounts of income — other than their judicial salary — for themselves and the sources of their spouses' non-investment income. In addition, the judges must report for themselves, spouses and dependent children all debts incurred, gifts and reimbursements for trips. The reports provide a way to check for potential conflicts of interest that judges may have when it comes to litigation pending in their courts.

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The Big Picture

Firm Leaders Discuss Challenges — Past, Present and Future

On Dec. 3, *Texas Lawyer* brought together managing partners from four Texas firms of various sizes to discuss the legal environment and the big issues they deal with on a daily basis. In a wide-ranging discussion, the firm leaders talked about their firms' financial performance in 2010 and touched on just about everything that takes up their time, such as billing, how to incentivize every lawyer and employee at their firm, and how and why they should grow their firms. The managing partners also talked about the hot practice areas in the Texas market, how to deal with lateral hires who just don't fit in or meet expectations, and how social media can be useful to their firms.

The managing partner roundtable took place in Dallas. The participants were Terry Conner, managing partner of Haynes and Boone in Dallas; Pollard Rogers, managing partner of Cantey Hanger in Fort Worth; Susan Schwartz, managing partner of Henslee Schwartz in Dallas; and J. Allen Smith, president of SettlePou in Dallas. A transcript of part of the discussion, edited for length and style, follows. The second installment will appear in the Jan. 3, 2011, issue of *Texas Lawyer*.

Brenda Sapino Jeffreys, senior reporter, *Texas Lawyer*: . . . Do you feel like we've turned the corner with the economy? Do you feel like your business is up? . . .

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TEXAS FIRM LEADERS DISCUSS CHALLENGES — PAST, PRESENT AND FUTURE

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J. Allen Smith, president, SettlePou, Dallas: I do. Walking down to my real estate group — and it has been a slow year for those guys — my partner, who is the head of the group, was very excited because he has three deals he's trying to close by the end of the year. It's the classic, old school "we've got to get this done before year-end." And so I feel like it's good. The insurance area has been really — gosh, files are just flying in — and lending area has been going really well. . . . One area that we have that's kind of a neat niche and has kind of done well during this tough time is the SBA lending area. I think a lot of the money that lenders were drying up with other traditional lending, people were running to the SBA lending, Small Business Administration. And we have a group of lawyers there that are very solid; they're former SBA lawyers themselves, been in the firm for a long time, and we do a lot of regional work there. So I feel good about 2011.

. . .

Pollard Rogers, managing partner, Cantey Hanger, Fort Worth: 2010 has been disappointing for us only in that we have not met our budget, which of course, for all of us is the primary driver in how we're judged by our partners. I will say that's coming off of two of the most successful years we've had, 2008/2009, financially in the firm's history. So it's a little bit of a balance. But transactional work, the deal flow continues to be very slow for us, and the litigation work has not kind of balanced that out as we would have expected. . . . And 2011 . . . I don't know. We've got strategies in place. We're looking to grow, certainly. . . . We've got our costs under control and we know we've got a good team of lawyers. There's not any fat in our model. So the answer is: You just need to grow. You need to bring in new revenue, new areas of practice. . . .

Jeffreys: So why were 2008 and 2009 so strong? . . . I mean, especially 2009. You know, that wasn't necessarily a good year for a lot of firms.

Rogers: Well, I think it [was] because we were moving from a very traditional economic model that probably Terry and y'all moved away from a long time ago. But Fort Worth is not on the cutting edge. And that's going away, say, from a tenured system of compensation where the incentives are not necessarily focused on profitability and annual financial performance. And we put that in place, and we started to see the benefits of that in '08 and '09. And so it was an internal adjustment that helped us really grow our profits per partner and revenue per lawyer.

Jeffreys: You held the carrot out here for the partners and they met . . .

Rogers: Yeah, get the incentives in line. . . .

Susan Schwartz, managing partner, Henslee Schwartz, Dallas: And that's probably one of the most challenging things for a managing partner to do is figure out what are the appropriate incentives for your lawyers, because not all lawyers are incentivized by the same thing. But management needs to be incentivized to build profit in. Happily . . . during this whole economic time, we've been able to grow cautiously, but what we've specifically been looking for were lawyers that may have a practice group that would be wanting to join us. . . . [W]e are looking for people that have a book of business to join us. We have never been kind of a traditional . . . model because we're small. And because we're separated into five cities, we're medium to small firms within each of those cities but have a statewide practice that can help our clients handle and deal with the litigation.



"2010 started out slower than 2009 as a bunch of cases rolled off, but now I would say we're cautiously optimistic," says Haynes and Boone's Terry Conner.

So in terms of going forward . . . some of our clients, obviously, are starting to control more than they have in the past what they're willing to pay us. . . . We do a great deal of insurance work, which is a wonderful practice to have, but we've had clients who are willing to extend our two-year contract with a 5 percent reduction in our fees. . . . So therefore, we're thrilled to have the work and continue to be thrilled to work with them, but there is that price-point pressure that is still going on.

Terry Conner, managing partner, Haynes and Boone, Dallas: 2009 was actually our best year in the firm's history, primarily as a result of having more litigation and trials than we've ever had and also quite a bit of bankruptcy work. Also, from a revenue standpoint, we had been growing in California and on the East Coast and that boosted revenues in '09. 2010 started out slower than 2009 as a bunch of cases rolled off, but now I would say we're cautiously optimistic. In the second half of the year, our corporate merger-and-acquisition activities picked up, real estate has started to pick up, as has lending, and also we have a good-sized intellectual property practice and we're seeing our clients more interested in being active in protecting their patent and IP portfolios. That's really started to pick up. I think the question going into 2011 will be for us just how strong will bankruptcy and litigation be. Again, we're cautiously optimistic, but those are big parts of our overall practice. And to be honest, the bankruptcy practice, although strong, was not as strong as it was in some prior downturns.

. . .

Jeffreys: . . . I'm just curious if we can come up with a short list that you might all agree on of what are the top maybe three or four challenges that you face right now.

Conner: You know, one thing I'll throw out, Brenda, is we're always charged with the responsibility of developing strategy and then helping drive the execution of that strategy. I think the definition of your strategy today is a little harder than it used to be because the business world has changed so much, and so I think we're spending more time on strategy and also trying to build a consensus in our law firm around what the strategy should be. . . . And also trying to predict the future, which is related to that, in trying to discern where the practices are really going, which clients are going to be doing what sort of things and where they're going to be



"This isn't an environment where you can just tell a client, 'Sorry, we're not going to give you a rate reduction,' " says Cantey Hanger's Pollard Rogers.

doing them. . . .

Smith: I think Susan hit the nail on the head earlier with the clients who want more for less, and they're wanting to keep their costs down, yet our internal costs keep rising. We still have folks that want to have a raise; we still have folks that want to have a bonus. . . . I think, like a lot of companies, you keep your employees happy, our clients will be happy, because they'll perform well and produce well. And so that's been, I think, the primary focus of just trying to focus on efficiencies and . . . meeting the clients' needs, yet keeping up the momentum internally.

Schwartz: I think there has to be a lot of pressure on marketing. . . . [T]here's so much competition now for services across the board. Allen's and my firm, we will run in the same areas, and we'll maybe run against the same clients or do work for the same clients, and so there's always that desire to try and continue taking care of the clients. . . . I don't know whether your partners allow you to just manage, but I'm a working lawyer on a daily basis, so in part, it's doing work for my clients and making sure I'm taking care of them personally, as well as making sure I'm getting enough work in the door to support and take care of all the employees, all our staff, all our lawyers. And so there's those types of pressures in terms of the marketing piece as well as making sure that we're doing what we need to do for our clients. . . .

Rogers: I think I echo what Terry said. The global recession has just created an extraordinary sensitivity to issues that you deal with every year, but they're just real challenges now, and it's revenue . . . and profit. And how can you tweak the model to where you can maintain the profit, grow the profit and grow the revenue? . . . [T]raditionally, we had a very heavy insurance practice and a med-mal practice, and that was great for a long time, and it created a lot of experienced lawyers, great trial lawyers. Well, we've moved away from that, fortunately, and most of the lawyers have been able to adapt to a traditional civil law practice, but still, there's that balancing because you've got on one side, high-margin litigation, and then low margin but high volume, which pays to keep the lights on. And . . . where's the balance there? And those are issues we face every year, but they're particularly important now because . . . all your areas of revenue are being squeezed — rate reductions or just lack of deal flow.

Conner: So I would just reinforce that, putting strategy

aside, managing for profitability . . . in a lower rate or lower realization environment is certainly something we're all wrestling with every day.

Jeffreys: What about employee morale? I mean, you were saying that's important, but as you're trying to do more . . . how do you incentivize the employees to really want to work 110 percent?

Smith: It's a struggle. I mean, we focus on trying to come up with neat ideas to do things with the employees on a periodic basis. One of the things I think that's kind of been neat is our firm has been recognized for two years as one of the top 100 workplaces in the Dallas area and, you know, that's just of all companies. And the funny thing is, to me, it's kind of like . . . recruiting somebody at law school. When you go out and talk about how good your firm is or you internally talk about how good your place is, people get fired up about it. So that's kind of a little bit of what we've tried to do is just focus on, "Hey, guys. It's a good place here. Let's keep it going." And you know, we do have core values. We have purpose statements, just like a lot of companies, but I think it's something that we really try to implement and keep ever present. We have framed on our walls internally the core values. . . . People walk by and see it every day.

Jeffreys: . . . [Y]ou're finding ways to incentivize the employees that don't necessarily have to do with money.

Smith: Nonmonetary, yeah. You know, casual. Our firm for a long time, because we represent banks and folks like that . . . we never had casual days. I mean, that was in vogue a lot . . . eight or nine years ago, and I think it's swung back. Well, we actually about a year-and-a-half ago decided: Let's move to one day a week, Fridays, have casual Fridays. We had 20-year employees walk in and say, "I thought I'd never see this day." . . . [B]ut it was kind of funny, because even just that didn't-cost-you-a-cent thing, really, people enjoyed that.

“[T]hat’s probably one of the most challenging things for a managing partner to do is figure out what are the appropriate incentives for your lawyers, because not all lawyers are incentivized by the same thing,” says Susan Schwartz, managing partner of Henslee Schwartz.

Jeffreys: I would like to talk a little bit about clients now. . . . Are they becoming more demanding? . . . And do you meet the demands? Do you negotiate? . . .

Rogers: This isn't an environment where you can just tell a client, "Sorry, we're not going to give you a rate reduction." And so you have to accommodate their needs. And what you want to do is make sure you've got a handle on it. "OK, you're having a bad year. Of course, we're going to help you. We'll do a 10 percent rate reduction for this year, and then we'll revisit it at the end of the year, so that at least you can budget that." And you don't create an expectation . . . of lower rates perpetually or that



“We have used social media — particularly LinkedIn is the primary one — and we have actually made contacts with new potential clients . . .,” says Susan Schwartz of Henslee Schwartz.

you can continue to squeeze that cost that the company has because, of course, the client's got to recognize that we're running a business, too. And we value the relationship and . . . what you really want is to develop the relationship. It's not just a matter of selling services. It's a matter of creating trust so that while you're prepared to give a rate reduction to help your client out, the client's got to recognize, "These people have done me well over the years, and I want to treat them fairly."

Conner: I think we're spending more time than we ever have talking to clients, both informally and formally, but reaching out to them and sitting down with general counsel, CFOs, etc., to get a handle on what their business needs are . . . where they're headed, which helps us . . . design our service offerings. Also, making sure that we really understand what they value in the legal services relationship, because although some things are constant, every client is a little different in terms of what they're looking for. In most cases, though, as we've already indicated, that leads to some discussion on pricing, and sometimes the clients are very focused on predictability of pricing, sometimes on discounts. Increasingly, we are talking about alternative fee arrangements. . . . I think I read a survey the other day that indicated that perhaps 10-plus percent of billings are now not by the billable hour among law firms. And that may be low. So we certainly have to be well-versed on how to talk about that and make that work, too.

Jeffreys: *The American Lawyer*/Association of Corporate Counsel survey that just came out said that . . . 29 percent of in-house lawyers surveyed said that they were using more alternative billing this year compared to last year. . . . [Editor's note: *The American Lawyer* is a Texas Lawyer affiliate.]

Conner: Yeah, and it has big implications . . . because we're not — I won't speak for everyone else here — used to working off of fixed fees, for example, and then trying to really work hard to manage what I call the internal cost of producing the work product. And we're going to have to do that.

Schwartz: And that's exactly where the issue is with respect to alternative fee arrangements. There are many entities that are saying that is the coming thing. We've seen many, many articles say the billable hour is dead. I think part of developing an alternative fee arrangement with a client is they have to be willing to give you the data and the statistics for you to be able to say, "OK, we think we can do this job for X. . . ." [T]hat's been one of our

difficult situations. When we go in and give a proposal, we're going in often blind. We know what our numbers are, and we know what we believe we need to staff it, but their historical experience isn't given to us, so it makes it difficult. And we have done alternative fee arrangements before with some of our clients, and it was a very good experience, and it cost us a fortune because, as lawyers, the one thing we cannot do is we cannot shortchange our clients' legal position. Our ethics do not allow us to do it, and our profession doesn't allow us to do it. So we have to take care of them no matter what. And if you're doing it for a flat fee, you better get the same result as if you were doing it by the hour. . . .

Smith: You know, it's funny. I think it is the in-vogue thing to talk about alternative fees, and Lord knows I've looked at it a lot. I ran across a State Bar of Texas 1961 fee schedule, and in the preface of the schedule it had a statement that I just thought is applicable today. It said putting aside cases of charity, it's not in the public interest that an inadequate fee be charged. The practice of law is a profession, not a trade. Those lawyers who would solicit clients on the basis of price should enter a business where professional standards are not required. When less than the minimum is charged, the lawyer will ultimately find it's necessary to so increase his volume of work, that his quality will suffer, and a proper professional interest in the client's welfare will not be maintained. I thought, "That's it." I mean, you've got to keep up the standards, so you can't compromise by just really selling out. And I had an in-house counsel — as Terry was saying, relationships are everything — talking with him two years ago, and he was talking about the rate increases. And I kind of took it like a bunker mentality: We're a partnership; we're in this together. And his comment to me that I thought was really almost heartening was, "You know, Allen, the day that I don't have to have a rate freeze, I'm going to call you up, and we're going to get back on track. But for right now, we need to hang in here together." And I said, "Jim, we're in there together. No problem." So I think it's really just, like you were saying, so important to just keep that relationship up, keep the communications up. One of my partners even said the other day that he'd been billing a client for 10 years, and the client told him just the other day, "You know, you're billing me at the wrong time of the month. You'd get your bills paid more if you'll just time it differently." It's communication.

. . .

Jeffreys: What about collections? Is that harder now?

Conner: I tell you, it was terribly hard in 2008 when everyone was hanging on to their cash, but then it loosened up some in '09. And now, frankly, most of our clients today have pretty strong balance sheets. . . . So I think the cash squeeze has diminished. I do think clients are — and they should be — demanding in terms of understanding what they're being billed for and that you're being able to explain the value. So there are a lot of dialogues about the bills, but on the other hand, I don't think it's as much of an issue regarding just a client's ability to pay as we may have had a couple of years ago.

Smith: . . . I think the quid pro quo for the feeling of our longstanding clients are oftentimes, "OK, you have frozen your rates. You have kept things down. I at least owe you paying your bills timely." So they've been pretty good about being conscientious about that. . . .

Rogers: . . . I'm not sure if it's client-driven or we're just doing a better job at managing receivables, because we're very aggressive about that every week. Everyone is getting a receivables report, and they can see where their receivables are on the timeline. And I'll spend a good amount of time sitting down with

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other lawyers and asking, “What’s the issue here? What do we need to do?” Sometimes it’s as easy a fix as make sure a bill gets there by the 10th of the month, because if it gets there by the 15th, it will go into the next cycle. . . . But more often than not it’s just being willing to call up the client and ask them, you know, in a polite and professional way, “Is there anything I can do about this?”

Jeffreys: And you have to do that as managing partner sometimes?

Rogers: No, no, no. . . . We always let . . . what we call [the] client relations attorney, the one that has the relationship, do that. That’s appropriate. But we . . . haven’t had an issue with realization, and I think it’s because we’ve been very aggressive about collections. And frankly, I don’t know about you guys, but we run pretty thin. . . . If you’ve got a bad productivity month and you’ve got a weak billings month, you’re going to see it very quickly. Ten years ago, you might not see it for six months, but it shows up very quickly. And that’s good because it causes us to be efficient and really watch the numbers every week, every month.

. . .

Jeffreys: . . . Well, I wanted to talk about what I find just such an interesting topic, all about the social media and how it affects firms and affects your lawyers. I’m wondering . . . do you have any rules about the use of social media for your attorneys? . . . Do you have blogs? Does the firm tweet? . . . How are you dealing with what’s a totally new concept out there?

Rogers: It’s new for us. We’ve got a couple of young partners who are techies, and they want to explore that, creating blogs. We have a couple who are doing it. And so we’re kind of using it as a test case. . . . How do



“I think like a lot of companies, you keep your employees happy our clients will be happy, because they’ll perform well and produce well,” says SettlePou’s J. Allen Smith.

you keep control of this? I think the primary problem . . . is the potential for liability, because you’re giving legal advice. It’s so easy if you’ve got a blog to step over the line. And so, frankly, we’re trying to come up with policies. I think it’s got a lot of benefits, and we need to explore it and make it part of our marketing, but we’re kind of at the front end of that right now.

Smith: Like Pollard, we’re cautiously stepping into that territory. We, too, have a few younger guys exploring the blogs. We have a written policy, and it’s primarily to focus on the preservation of confidentiality. And, of course, with the recent WikiLeaks episode, you

kind of realize there’s a lot of issues about security of electronic communications in any fashion. So we’ve been very careful about it. . . .

Conner: Personally, I’m waiting for the new version of Facebook for Dinosaurs so I can participate. I’m personally pretty far behind the times, but we do have a social media committee which works with the marketing group, both to develop the policies and also to train our lawyers on how best to use some of the social media. We encourage, for example, utilization of LinkedIn. Again, I don’t use it . . . but others do, and we do operate a couple of blogs, OK, but we control those so that they’re not unfettered. I’ll put it that way.

Jeffreys: They’re edited?

Conner: Well, they’re — we keep up with them. I’ll put it that way. . . . But one of them is in the IP area. I think one in bankruptcy as well. But I think this is going to be a pretty

important part of our overall marketing strategy over the next decade, and so . . . we’re paying quite a bit of attention to it now.

. . .

Schwartz: We have used social media — particularly LinkedIn is the primary one — and we have actually made contacts with new potential clients, and so we have found that to be a very useful source. But again, the issue is: It’s completely out there. And I can’t even begin to say I have any understanding of the power of it, but there are a number of ethical pitfalls that we have to be careful about compared to just another business entity that doesn’t have those types of rules that we have under our Code of Professional Conduct. But we have made connections and been able to develop a connection to a potential relationship to some business through social media.

Jeffreys: Well, you were saying you put job ads on Craigslist, right?

Schwartz: . . . We absolutely have, and we’ve gotten a load of folks. Because being 42 lawyers in five cities, we are not able to grow traditionally like the big firms can by bringing lawyers in from law school, and probably that whole model has changed anyhow since I started a million years ago, so we’re looking for good lateral candidates with older lawyers. . . . The younger lawyers, we’re just looking for others that great firms like the other three in the room have trained and maybe they want to go to a smaller environment.

. . .

Jeffreys: So do you have rules, though, for your employees or your lawyers, like be careful about what you tweet, what you put on your personal Facebook account? . . .

Conner: There’s training, which I think will include the dos and don’ts. One other data point, going back to your question, a recent survey by Greentarget indicated that over 50 percent of general counsel do expect to be utilizing social media increasingly as a way of gathering information on law firms. So [it’s] something we really can’t ignore.

. . .

Jeffreys: Do you look at Facebook accounts in making a hiring decision?

Rogers: I’ve thought a lot about that. How much due diligence should you do on a law student?

Conner: That’s an interesting question.

Rogers: Because you can find out a lot that 10 years ago wasn’t available just by getting on the Internet and doing some research. That’s not part of our recruiting strategy. We don’t do it. I think it actually would be pretty smart to do that.

. . .

Schwartz: . . . I think that with respect to an employer, though, in looking at the employment law, legal implications of that, I do think that if you’re going to be doing those types of reviews, it’s probably beneficial to give a disclosure to the prospective applicants with respect to that you may be using that, because we have seen situations in which you look at someone’s Facebook page and perhaps they are a member of a cancer survivor’s group and then they don’t get the job. Did they not get the job because you discriminated against them because you learned something that you didn’t see in the application and was not a question that you should be asking anyhow? . . .

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