

**TESTIMONY BEFORE THE
JOINT COMMITTEE ON WAYS & MEANS**

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Via Videoconference



Mark V. Green
Chief Justice
The Appeals Court
Commonwealth of Massachusetts

Senator Gobi, Representative Williams, and members of the Joint Committee, I thank you for the opportunity to provide testimony on behalf of the Appeals Court. I would also like to thank your legislative colleagues, particularly Senator Rodrigues and Representative Michlewitz, for their assistance to the Appeals Court over the years. Your financial support has enabled the Appeals Court to lead the nation in end-to-end digital content management, and to fulfill our obligations to the Commonwealth by producing timely appellate opinions of the very highest quality, while enhancing administrative operations, implementing education and training initiatives, improving case processing, and making technology improvements throughout the court. Never has the value of our investment in technology equipment, systems and training been more apparent than during the pandemic that has dominated the past year. Based on our largely paperless operations leading into the pandemic we at the Appeals Court were able to transition our entire workforce to remote operations in three days' time, from March 16-19, 2020, and thereafter to continue full operations, with hearings on a virtual Zoom platform with real time public access through a YouTube livestream.

As you know, the court expanded in 2001 from fourteen (14) to twenty-five (25) justices, in order to resolve a terrible backlog. With the expansion, we were able to clear the backlog and keep pace with our caseload. But the expansion of the court in 2001 did not include a corresponding increase to our support staff. In 2001, full time court support personnel (excluding judges and law clerks) numbered 70. As we entered the pandemic that number was down to 58, but it has since been further reduced even further to 52 through retirements and attrition. We have moved cautiously to fill those vacancies, due to the budget uncertainty caused by the pandemic. As we emerge from the pandemic, with your support we hope to restore those

critically needed staff positions to enable us to provide the public with the level of service they have come to expect from us.

It is important to note that, like the Trial Court, the Appeals Court has no control over its incoming caseload. The appeals that we hear come from every department of the Trial Court, as well as state agencies such as the Appellate Tax Board, the Industrial Accident Review Board and the Employment Relations Board. In the most recent period, we have seen a decline in our caseload, following the impacts of the pandemic on Trial Court operations. As the Trial Court emerges from the pandemic and returns to full operations, however, more cases will go to judgment and inevitably, more appeals will come to us. For about 98% of those cases, other than those taken for direct review by the SJC, we are the court of last resort providing the final appellate decision for the parties. Consequently, the quality and speed of our decision-making are central to the entire judicial system and important to state government and the residents of the Commonwealth as a whole.

During FY20, 94% of all 3,143 briefs were filed electronically (97% in criminal cases, 92% in civil cases). In 2019 the Appeals Court adopted a standing order making electronic filing mandatory for most documents with limited exceptions, including for any impounded document or document filed by a self-represented litigant, and today substantially all of our documents are filed electronically. As I noted in my introductory remarks, our transition to paperless operations before the pandemic enabled us to continue full operations despite moving our entire workforce to remote operations at the start of the pandemic, and continuing completely remote operations to the present time. Once filed, Appeals Court judges and staff are working with those materials largely without resort to hard copy, and moving the content from one point to another across our network systems, connected through a VPN. Judges prepare for and participate at oral argument

(via Zoom during the pandemic) utilizing iPads, and opinion drafts are circulated for review and edited electronically. The digital platform offers more convenient access to the content, better utilizes staffing resources and has proven to be a cost effective initiative for our court, even before the pandemic; during the pandemic it has allowed us to continue full operations without skipping a beat.

Of notable importance is that 93% of our annual budget is attributed to payroll alone. As a result, the opportunities to achieve further savings are extremely limited. Indeed, as I have mentioned, after a long period of operating with staffing shortages in each department, we need to fill a number of key vacancies. Nonetheless, we are committed to continuing to implement reforms, create efficiencies and allocate existing resources to improve the delivery of justice in a fiscally responsible manner. Our transition to a digital platform is but one example of this. In fact, we are currently undertaking a comprehensive operations assessment, with the assistance of the National Center for State Courts, to guide the decisions we make as we fill out the current vacancies. In crisis there is opportunity, and we intend to use the disruption of the pandemic to allow us to conduct a top to bottom assessment of how best to deploy our human resources as we emerge from the pandemic and return to the new normal – whatever that may be.

The Court also has expanded public access to better serve the residents of the Commonwealth. Before the pandemic, we posted audio of oral arguments on our website, and we regularly conducted panel hearings away from the John Adams Courthouse in locations around the Commonwealth including Worcester, Barnstable, Amherst, Springfield, and Dartmouth. Since the pandemic and our transition to videoconference hearings, audio and video of all oral arguments are posted to our YouTube channel for public access, live at the time they occur and archived for public access thereafter. And we have continued our outreach to the

communities we serve, inviting local law schools and community groups to interact with panels following oral argument, even though we cannot hold our sessions live in their respective locations.

In FY21 the Appeals Court received an appropriation of \$13,881,671 (just one dollar less than we requested). The FY22 figure of \$13,881,671 proposed in House 1 for the Appeals Court is identical to our current appropriation, and well short of the amount we requested: \$14,159,305. The higher request is simply the amount needed to cover increases resulting from annualization, COLA adjustments, normal step increases, and projected mandated retirement buybacks.

The requested appropriation for this fiscal year does not contemplate any great expansion of personnel or facilities, other than the filling of vacancies that arose during the pandemic and went unfilled while we awaited our FY21 appropriation. It does, however, presume that the Chief Justice and all associate justice positions are filled along with sufficient law clerk positions to provide the requisite support. Respectfully, the requested appropriation is simply a maintenance budget, designed to preserve staffing and operations at essential levels.

I appreciate the enormous challenges that the Commonwealth will face during the next fiscal year. With that in mind, the Appeals Court is asking for no more than the amount the court requires to perform its critical responsibilities. We respectfully submit a budget request that is an increase of just 2% over our current appropriation. We commit to you that we will continue to be good fiscal stewards, cutting costs where possible, spending each dollar wisely, and making smart investments to achieve long-term savings.

At this point I would again like to thank the Joint Committee for its consideration of the Appeals Court's request and answer any questions that you may have.