

TESTIMONY BEFORE THE JOINT COMMITTEE ON WAYS & MEANS

February 13, 2018
Seven Hills Foundation
Worcester, MA

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Senator Moore, Representative Keefe, members of the Joint Committee, thank you for the opportunity to come before you today on behalf of the Appeals Court. This is my first budget hearing as Chief Justice of the Appeals Court, as I was just appointed in December. I very much look forward to working with the Joint Committee and both branches of the Legislature throughout the budget process. I would also welcome the opportunity to come meet with you individually in your offices to discuss my goals and objectives for the Appeals Court and how we would apply the resources you provide to meet those objectives. Also, as this is my first time, if I unwittingly spend time on topics you already know all about please accept my apologies in advance. I know

how busy you are, and I am sure you will help focus me on what you need to know so I do not waste any of your valuable time.

In FY2018 the Appeals Court received an appropriation of \$13,217,377. The FY2019 figure of \$13,627,377 proposed in House 2 for the Appeals Court is an increase of a little over \$400,000 from last year. The greatest portion of that increase, over \$275,000, is necessary to fund the statutory pay increase for 25 justices and six clerks, for which we remain greatly appreciative. We will also be required to spend just under \$30,000 on step increases for current personnel in accordance with collective bargaining agreements. I should also note that in several recent years, including FY 17, we were able to make ends meet only because of numerous judicial vacancies; those

vacancies have now all been filled. So substantially all of the increase is already earmarked just to maintain current operations.

But I also want to place our current operations in historical perspective. As you know, the Court expanded in 2001 from fourteen to twenty-five justices, in order to resolve a terrible backlog. At that time, civil cases waited almost two years after they were fully briefed before they were heard, and criminal cases waited a little over a year. With the expansion, we were able to clear the backlog and stabilize at our current levels of reaching cases for argument about four months after they are briefed and ready in both case types. But the expansion of the court in 2001 did not include a corresponding increase to our support staff. In FY2009, our budget included funding for eight

additional support staff positions to address a portion of that shortfall, but during that year the Commonwealth's fiscal condition deteriorated, and we voluntarily returned almost \$400,000 to the General Fund instead of filling those positions. To this day those positions remain unfilled and unfunded. In fact, far from expanding our support staffing has declined through attrition. In 2001, full time court support personnel (not counting the justices and their law clerks) numbered 70. Today that number is 58, consisting of staff attorneys, administrative assistants, security, management and Clerk's Office personnel. In sum, we have met many years of challenging budgets with attrition from our support staff, despite nearly doubling the size of the Court to meet our caseload. We do not currently intend to replace the bulk of those

positions, but attrition cannot continue indefinitely and we have reached the point where we must restore a few positions to perform our essential function. The FY19 H 2 recommendation would allow us to begin along this very necessary course.

It is also important to remember 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 2017, 1634 appeals were filed in our court and our caseload in 2018 appears likely to increase; in the several most recent years, like us the Trial Court had a large number of unfilled judicial positions. Now that the Trial Court

is almost fully staffed with judges, more cases will go to judgment and, inevitably, more appeals will come to us. For approximately 95% of those cases 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 citizens of the Commonwealth as a whole.

The Appeals Court is also being challenged to keep up with significant changes in the practice of law, which reflect rapid shifts in society. Our world is faster, more specialized, more diverse, more interactive, more data-driven and more technologically sophisticated. For the Appeals Court to keep up, it must be all of those things as well, and that is the mission I believe we need to accomplish if we are going

to meet the needs of the people of the Commonwealth. Lengthy delays significantly disrupt people's personal and professional lives. My heart goes out to parents awaiting custody decisions and similarly anxious litigants. I have been significantly reorganizing existing staff resources to make the court more efficient, and staff is responding to those requests and agreeing to take on more work individually and collectively.

We also have used technology to become more efficient, and to better serve our constituents, largely using scraps of funds left over at the end of the budget year on those occasions when we had such funds available. But we have made significant progress, particularly in e-filing and paperless practice. Chief Justice Kafker last year described

our e-filing pilot; I am pleased to report that we now receive more than 75% of our briefs and other materials for nonimpounded panel cases by e-filing. But it is more than that. Once e-filed, our judges and staff work with the case materials paperlessly. Our judges read and annotate the briefs in preparation for argument using iPads, and drafts are circulated for review and editing through our document management system or by email, rather than in hard copy. The parties in our cases receive notices electronically as well. We are leading the nation in end-to-end digital content management. And it is all, as the saying goes, faster, better, and cheaper. We have more we must do, but we are off to a very good start.

I fully recognize the challenges that the Commonwealth will face during the next fiscal year. With that in mind, the Appeals Court is asking for no more than what it requires to do its job properly and I believe the budget request of the Appeals Court for FY2019 in the recommended amount of \$13.6 million will accomplish that goal.

Thank you, Senator Moore and Representative Keefe, for the opportunity to address the Committee. I very much appreciated the chance to share with you my goals for the Appeals Court, along with the budget that we believe will permit us to accomplish the important mission of our court. I would be pleased to answer any questions you may have.