

TESTIMONY BEFORE THE JOINT COMMITTEE ON WAYS & MEANS

Wheaton College, Norton

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Chief Justice

The Appeals Court

Commonwealth of Massachusetts

Senator Timilty and Representative Cantwell, members of the Joint Committee, thank you for the opportunity to come before you today on behalf of the Appeals Court. I would like to begin my remarks today by saying that this is my first budget hearing as Chief Justice of the Appeals Court, as I was appointed last July. 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 the budget you provide our court will be executed to meet those objectives. Also if I belabor the obvious or devote too much time to issues that you already know well today, please accept my apologies in advance.

In FY2016 the Legislature, approved an Appeals Court budget of approximately \$13.25 million (\$13,226,326) which the Governor reduced by veto to about \$13 million. The Governor's Office undoubtedly understood at the time that we would enter the year with five judicial vacancies out of a total of 25 statutory judges and that not all five could be filled in FY 2016. This was because a new Judicial Nominating Commission was being created and it would take time to establish the commission, select judges and get them approved by the Governor's Council. The Governor's reduction reflected this reality. As I also understood when I became Chief Justice that the reduction was tied to our vacancies, I did not seek to have the Legislature override the veto. I knew we could manage with the reduced budget given the number of judicial vacancies. I fully understand that the Legislature must make

difficult choices in constrained financial circumstances and I am not asking the Legislature for any unnecessary funding on the court's behalf.

The FY 2017 budget proposed by the Governor in the amount of approximately \$13.1 million provides a 1% increase for the Appeals Court but does not cover the cost of filling the judicial vacancies. The process to fill those vacancies is currently underway, and doing so is necessary to keep pace with our caseload which I will describe in more detail shortly. \$13.1 million is approximately \$300,000 short of the amount we need to fully fund the vacant judicial positions and to pay contractually obligated collective bargaining and step increases to our non-judicial staff. As our staff is heavily unionized, we are bound by contract to pay these amounts, which in FY17 will increase our budget by 144,470. Let me emphasize that our requested budget does not seek to in any way expand our personnel; it is simply the cost of paying for the 25 judges provided for by statute and maintaining the present level of support staff and operations.

As 93% of our budget request of \$13,409,912 is to pay judicial and staff salaries, a budget of \$13.1 million dollars will force us to engage in further staff attrition and, possibly, lay off employees. In 2001 the court employed 130 employees, including justices and staff; we currently employ 110, a reduction of 15%. Furthermore, under collective bargaining agreements, we would be forced to lay off our most junior, but also some of our most talented, employees. We have managed without replacing those twenty positions by reorganizing responsibilities and

leveraging technology, but we believe we are staffed at the minimum necessary to support operations at this point.

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 FY 2015 alone, 1800 appeals were filed in our court, and our caseload in FY 2016 appears likely to be similar in number. 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 vitally important to state government as a whole.

To fulfil its important public responsibilities, the court needs a full complement of justices and a skilled and capable staff. The Appeals Court is being challenged to keep up with significant changes in the practice of law, which reflect rapid shifts in society at large. Our world is faster, more specialized, more diverse, more collaborative, more data-driven and more technologically sophisticated. For the Appeals Court to keep up, it must be all of these things as well. That is the mission I believe we need to accomplish if we are going to serve the interests 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 other similarly anxious litigants. I have been significantly reorganizing existing staff resources, within the boundaries established by the collective bargaining units, to make

the court more efficient, and staff is responding to those requests and agreeing to take on more work individually and collectively. The judges have also been doing their best to take on the additional work caused by multiple vacancies. The key, however, is how many judicial panels we can sit every month. As an appellate court, we always sit in panels of three. We also have a single justice session to handle emergency matters. With 25 judges we can therefore sit eight panels of three with one single justice every month. When we sit only 6 or 7 panels, we begin to fall behind. There are also only a certain number of cases each panel can do each month without individual justices falling behind. On the Appeals Court each judge has to decide between 180 and 210 cases a year and write one-third of them, approximately 60 or 70 a year. There are only 365 days in a year. As I explained to my sister-in-law recently over the holidays when she asked what it was like being an Appeals Court Judge, I said do you remember when you had to write term papers in college. She said yes and she said that brought back some bad memories. I told her now think what it is like to have to write 60 or 70 term papers a year. That is an Appeals Court justice's job. She decided this was not a particularly appetizing career. Anyway I digress.

I fully recognize the financial challenges that the entire 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 fulfill its responsibilities. I believe the budget request of the Appeals Court for FY 2017 in the amount of amount of \$13.4 million will accomplish that goal. Our budget request, is just \$175,000 more than the amount of the budget approved by the Legislature for the Appeals Court last year. That increase will allow us

to pay contractually required raises and fill vacancies to ensure we have the statutory number of judges. I fear that otherwise I may be forced to lay off critical members of our team.

Thank you, for giving me the opportunity to address the Committee. I very much appreciate the chance to share with you my vision for the Appeals Court. I would be pleased to answer any questions you may have.