

*TESTIMONY OF
THE HONORABLE BRUCE E. KASOLD, JUDGE
U.S. COURT OF APPEALS FOR VETERANS CLAIMS*



*FOR SUBMISSION TO THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON MILITARY CONSTRUCTION,
VETERANS AFFAIRS, AND RELATED AGENCIES
FEBRUARY 24, 2010*

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MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE:

Good Morning. I am Judge Bruce E. Kasold, and I am here pursuant to your kind invitation to Chief Judge William P. Greene, Jr., to present testimony on the fiscal year (FY) 2011 budget request for the United States Court of Appeals for Veterans Claims. Chief Judge Greene asked me to testify today because he steps down as Chief this August and will not be managing the FY 2011 operations. I understand that you have our budget request, so my remarks today will briefly (1) summarize our budget request, (2) provide an update on the caseload and measures undertaken to handle the large number of appeals being filed, and (3) provide an overview of recent developments on our Courthouse Project.

I. Budget Request

The Court's FY 2011 budget should be viewed in two parts. Our general budget request is \$28,146,729, an increase of \$1,031,729 over the Court's FY 2010 request. This includes \$2,515,229 sought by the Veterans Consortium Pro Bono Program (Pro Bono Program). The increase in our general budget is attributable to an increase of \$695,229 sought by the Pro Bono Program and in increase of \$336,500 for the Court's general operating expenses. In addition, our FY 2011 budget

request includes a one-time request of \$62,000,000 for construction of a courthouse for the U.S. Court of Appeals for Veterans Claims, bringing our total FY2 2011 budget request to \$90,146,729.

Since FY 1997, the Pro Bono Program's budget request has been provided to Congress as an appendix to the Court's budget request. Accordingly, I offer no comment on that portion of our budget request, although I do commend the Pro Bono Program for its success in providing legal assistance to many appellants seeking judicial review from the Court.

Regarding the Court's general operating budget, the increase of \$336,500 over the FY 2010 request is attributed to an increase in Personnel Compensation and Benefits of roughly \$1,167,000 (including the addition of 3 full-time equivalent (FTE) positions to bring our total FTEs to 127), offset by a decrease of roughly \$830,000 in "Other Objects." "Other Objects" include such costs as rent payments; modifications to existing space; necessary equipment; charges for financial accounting and reporting; costs of paying the Federal Protective Service for security personnel to provide security monitoring at the street entrances of the Court's present location; cross-servicing charges of payroll/personnel services; the cost of the U.S. Marshals Service contract for Court Security Officers; communications, printing and supplies expenses; contributions to the Judges Retirement Fund; and travel expenses.

The 3 additional FTE positions will provide a secretary to our recalled-retired judges, an additional Staff Attorney for our Central Legal Staff, and an Appellate Commissioner. The budget request for Personnel Costs also includes funding for the cost of living allowances for the Court's current FTEs. The net decrease of roughly \$830,000 in the Court's "Other Objects" budget request is attributed to several factors: General Services Administration (GSA) has estimated a decrease in the cost of the Court's current and future rental space; the Court does not anticipate new chambers build-

out costs in FY 2011 as it did in FY 2010; and FY 2011 is not a year in which we have a judicial conference, so we do not anticipate expenses coincident with that event.

II. The Court's Caseload and Recent Innovations

As Chief Judge Greene has testified to repeatedly in recent years, the caseload at the Court has risen sharply over the past several years, essentially doubling. Case filings from FY 2007 through 2009 averaged almost 4,500, (FY 2007 (4,644), FY 2008 (4,128), and FY 2009 (4,725)), compared to an average of about 2,300 from just 5 years earlier (FY 2002 (2,150), FY 2003 (2,532), and FY 2004 (2,234)). We also have had a correspondingly significant increase in the number of motions filed with the Court. In terms only of requests for extensions of time, the average number of motions received by the Court each month has jumped from roughly 200 to 400 per month during FY 2002 through FY 2005, to between 1,000 and 1,200 per month since FY 2006. In addition, the Court currently receives approximately 400 various other types of motions each month, ranging from procedural to dispositive questions.

Thanks in large part to your support, the Court partnered with the Administrative Office of the U.S. Courts to acquire, adapt, and implement an electronic case management/electronic case filing system (CM/ECF). CM/ECF has now been fully functioning for over one year and we are seeing the benefits of receiving documents electronically as well as issuing orders and decisions electronically. CM/ECF has produced significant administrative efficiencies, including remote 24-hour filing access, reduced mailing/courier costs for the parties and the Court, reduced storage space needed for record retention, the opportunity for multiple users to access records, and efficient and cost-effective electronic notification procedures.

The Court also continues to benefit from the enhanced pre-briefing dispute-resolution program that was initiated and developed over the past few years. We provided extensive formal mediation training to the staff attorneys in our Central Legal Staff (CLS), and have substantially increased the number of pre-briefing conferences that they hold with the parties. CLS staff attorneys now conduct mediation conferences in essentially all matters where the appellant is represented by counsel – equating to roughly 65-70% of the total number of cases. Of the cases where mediation is scheduled, approximately 50% are resolved prior to the parties submitting an appellate brief. Further, even in those cases where the appeal is not resolved at mediation, the dispute-resolution process generally is successful in narrowing and focusing the issues on appeal. The feedback from members of the Court's Bar, as well as from our CLS attorneys, is that this mediation program is efficient and effective in bringing the parties together and resolving issues consistent with the law, due process, and the interests of justice, while conserving judicial resources. The Court currently has 10 CLS staff attorneys and the FY 2011 budget estimate includes a request for one additional CLS staff attorney to assist in continuing their success.

We continue to benefit from the service of the recalled retired judges. We currently have two judges serving in recall status, and anticipate the service of a third beginning in May. With Chief Judge Greene's retirement this coming fall there will be 6 senior judges available for recall, and we anticipate one or two judges performing duties at any given time throughout the year, warranting full-time secretarial support, which is the basis for our request for one of the new FTE positions.

Looking ahead, we continue to pursue ways to handle cases fairly and efficiently. Although most motions filed with the Court can be handled by the Clerk of the Court, with the increased number of motions comes an increase in the number warranting closer review, which currently is undertaken

by the judges. At least one other federal appellate court has appointed an Appellate Commissioner to review and decide non-merits motions filed by the parties, thus freeing up judges to work on merit case dispositions. We believe it is time to appointment an Appellate Commissioner to handle our growing motions practice, which we believe will permit judges to focus additional time and effort on merit case dispositions. Accordingly, we seek an additional FTE for this purpose.

III. A Veterans Courthouse

To our knowledge, the United States Court of Appeals for Veterans Claims is the only Federal Court of record without a permanent courthouse, and we are pleased that plans to make this initiative a reality are progressing.

As background, in 2004 Congress requested a study to review the feasibility of acquiring a dedicated Veterans Courthouse and Justice Center. That original feasibility study, called for in H.R. 3936, was completed by GSA in February 2006. It identified four primary options for obtaining a Veterans Courthouse and Justice Center: (1) Building a Courthouse to suit on federal property, or renovating an existing unique federal facility; (2) co-locating the Court with associated entities in a leased, privately constructed build-to-suit facility, an existing unique private facility, or an existing commercial office space; (3) relocating the Court in an existing commercial office building; and/or (4) no change.

In 2007, per S. 1315, a follow-on study was requested to focus on the feasibility and desirability of leasing significant additional space for the Court in the commercial office building at the Court's current location, and, in essence, turning that office building into a Veterans Courthouse and Justice Center. That study, completed in April 2008, concluded that to accomplish that goal two federal tenants

would need to be displaced. The relocation and build-out costs for those tenants would result in the highest cost option to the public for establishing a dedicated Veterans Courthouse. The follow-on study also concluded that although converting the commercial space at the Court's current location on Indiana Avenue to a Veterans Courthouse meets some of the project goals and could potentially be the least disruptive to Court staff during the transition, the complexities of relocating displaced tenants and the limitations of occupying commercial space pose significant drawbacks to this option. GSA's conclusion, based on both the original and the follow on studies, was that the option that best fulfills the programmatic purposes behind establishing a Veterans Courthouse is a build-to-suit courthouse on federal property within close proximity to the other federal courts in Washington.

Plans have progressed, and as you know, as part of the FY 2009 appropriation, the Court received \$7,000,000 for advanced planning and architectural design of a Veterans Courthouse. Those funds have been transferred to GSA and the process has begun to determine whether it is feasible and prudent to build a Veterans Courthouse on GSA-owned property at 49 L Street, S.E., in Washington. Currently at this location is a 32,000 square foot warehouse situated on a .66 acre site, one block from the Navy Yard Metro stop.

A project manager within GSA has been identified, and GSA has hired an architectural firm, MGA Partners, to complete a Pre-Development Planning Study (Planning Study). The goal of the Planning Study will be to determine the feasibility of the selected site, ascertain the need and potential for purchase of an adjacent lot, provide a vision for the massing and character of the building, and confirm the projected cost and schedule for completion. Representatives from MGA Partners have met, and will continue to regularly meet, with representatives from GSA and the Court to develop a plan that conforms with the project goals. The goals identified in the 2008 feasibility study are to: (1) provide

an appropriate setting that conveys the Nation's commitment to independent judicial review of veterans' benefits awards and its gratitude and respect for those who have served; (2) to create a Veterans Courthouse that is adequate in size, reachable through public transportation, fully ADA-accessible, and adjacent to public amenities; (3) to follow appropriate security guidelines to protect judges, employees, and the public; and (4) to develop an implementation strategy that is fiscally responsible and will appeal to all entities involved. MGA's Planning Study is scheduled to be completed by the end of FY 2010.

The Court did not proffer a specific funding request for the Veterans Courthouse project in our FY 2010 budget request because we concluded that plans were too uncertain at that time to make such a request prudent. We are pleased now, however, to be on the verge of making the Veterans Courthouse a reality, and the \$62,000,000 request as part of the FY 2011 budget is needed to ensure that the Veterans Courthouse project is completed in a timely manner.

We appreciate Congress's support in providing the necessary appropriations for undertaking this effort to create a tangible symbol of the Nation's commitment to justice for veterans.

IV. Conclusion

On behalf of the judges and staff of the Court, I express my appreciation for your consideration of the Court's needs, and I thank you for your past and continued support, and for the opportunity to provide this testimony in support of the Court's FY 2011 budget request.