

STATEMENT OF
THE HONORABLE BRUCE E. KASOLD, CHIEF 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

MARCH 18, 2015

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE:

I am pleased to appear before you and present testimony on our fiscal year (FY) 2016 budget request and performance plans of the United States Court of Appeals for Veterans Claims. My remarks today will (1) summarize our budget request, (2) provide an overview and update on the Court, its caseload, and its operations, and (3) reiterate our support for a Veterans Courthouse.

I. Budget Request

The Court's FY 2016 budget request totals \$32,141,000. This request is comprised of two parts – the Court's necessary overall operating expenses of \$29,641,000, and a request by the Veterans Consortium Pro Bono Program (Pro Bono Program) for \$2,500,000. Since FY 1997, the Legal Services Corporation/Pro Bono Program's budget request has been provided to Congress as an appendix to the Court's budget request, although the Court functions merely as a pass-through for that amount. Accordingly, I offer no comment on that portion of our budget request.

As to the Court's overall operating expenses, our FY 2016 request reflects an increase of \$755,000 over our FY 2015 request. This variance reflects increases of (1) \$325,000 in personnel compensation, (2) \$330,000 in operating expenses, and (3) \$100,000 in the statutorily required

contribution to the Court of Appeals for Veterans Claims Retirement Fund (Retirement Fund). More specifically:

(1) For FY 2016, the Court requests \$18.306M for Personnel Compensation and Benefits, an increase of \$325,000 from FY 2015. The Court requests staffing for 126 full time employees, unchanged from FY 2015. The Court's personnel and benefits appropriation request covers salary, health benefits, insurance, employee matching contributions to the Thrift Savings Plan, and routine promotions and cost-of-living adjustments. Of note, the Court's authorized number of judges reverts from 9 to 7 as the next two judges retire or otherwise leave their positions. One judge has announced his retirement, effective this August, so we revert to 8 judges at that time. Our FY 2016 budget request, however, includes funding for a 9th judge and standard chambers supporting staff of 5. This is in anticipation of legislation that will re-authorize 9 judges; this was coordinated with your staff.

The Court continues to experience efficiencies from electronic filing and case management. While new filings were down somewhat at the start of FY 2014, as of mid-FY 2014, the number of appeals filed is again on the rise. We anticipate this recent trend will continue as the VA's Board increases the number of decisions it renders each year. Thus, we project the need to maintain our present FTEs.

Additionally, our FY 2016 budget request reflects a reclassification of three of the unfilled positions from docket clerks (CS-9) to judicial law clerks (CS-13), which accounts for part of our increased funding request. These clerks likely will be hired as our caseload increases and as our Senior Judges are recalled.

(2) For FY 2016, the Court requests \$7.734M for all other operation expenses ("Other Objects"), an increase of \$330,000 from FY 2015. These funds are used to satisfy the Court's daily

operational needs, and to cover such expenses as rent, contract services, communication and utility expenses, equipment, furniture, supplies, subscriptions, travel and transportation, and printing expenses. These expenditures allow the Court to maintain all of its essential service agreements, and support enhanced IT initiatives aimed at stability and security. The increased request in Other Objects for FY 2016 results primarily from the Court's comprehensive review of our Continuity of Operations Plan (COOP) and the determination that we could advance work (and therefor funding) toward implementation of a secure, virtual desktop infrastructure and video conferencing capability.

(3) For FY 2016, the Court requests \$3.6M for the statutorily required contribution to the Court of Appeals for Veterans Claims Retirement Fund (Fund). This request is \$100,000 higher than the FY 2015 request. Per title 38 U.S. Code, section 7298, the Chief Judge of the Court is charged with securing an "annual estimate of the expenditures and appropriations necessary for the maintenance and operation of the fund." The Court contracts with an actuary to provide guidance on how best to comply with obligations related to maintaining the Fund, and the FY 2016 budget estimate is based on that actuarial estimate.

II. The Court, its Caseload, and its Operations

As many of you know, the veterans' benefits process, administered by the Department of Veterans Affairs (VA), operated for many years without any right by a veteran to independent judicial review of a decision by VA on a claim. Ultimately, in 1988, Congress established the U.S. Court of Veterans Appeals, now the U.S. Court of Appeals for Veterans Claims, as an independent appellate court that would handle only veterans benefits cases, applying general principles for appellate review of agency final decisions. Since then, a coherent body of specialized veterans law

jurisprudence has been developed, and we are now into our 27th volume of law in the West Reporter Series: West's Veterans Appeals Reporter.

In a nutshell, a claim for veterans benefits proceeds as follows: A veteran or a qualifying family member files a claim with VA. The VA claims process is designed as a paternalistic one, and the Secretary is charged with assisting the claimant to substantiate his or her claim by gathering evidence and providing medical examinations when needed. If dissatisfied with the initial decision, the claimant may seek additional review that includes an appeal to the Board of Veterans' Appeals (Board). The Board is as an independent adjudicative body within VA and it reviews a claim without deference to the initial decision. Following any adverse decision by the Board, the claimant may seek appellate review at the Court as a matter of right. At this point, the claimant leaves the paternalistic agency claims process and enters the traditional, adversarial realm of judicial review.

An appeal is initiated at the Court by filing a notice of appeal within 120 days after the date of the Board decision. After identifying and assembling the record upon which the appeal is based, the parties generally participate in a staff conference with an attorney from the Court's Central Legal Staff (CLS). The CLS attorney's role is to work with the parties to refine the contested issues, and when possible to assist the parties in reaching a mutually agreed upon resolution of the matter prior to involvement by a judge – generally a joint agreement to set aside the Board decision and remand the case to the Board for further development and readjudication.

If the case cannot be resolved, the parties prepare written briefs, and may request oral argument before the Court. During this period of administrative processing – which is common to all appellate courts – unrepresented (pro se) appellants frequently obtain counsel. In FY 2014, about

1/3 of the appeals were filed by appellants without representation, but the number of cases where the appellant remained unrepresented at the time of decision dropped to 15%.

Once all briefs are filed, the appeal is forwarded to a judge for decision. The assigned judge, with the assistance of law clerks, reviews the case to consider whether it presents a novel issue requiring a panel decision or whether it involves the application of settled law. If the former, the case is assigned to a panel of three Judges who decide the matter with or without oral argument by the parties. If the case involves the application of settled law to the facts, a single judge is permitted to decide the case and issue a memorandum decision. This single-judge decision authority is essential to the Court's ability to handle its formidable caseload.

Prior to issuance, all decisions are circulated among all of the judges for review, and in the case of single-judge decisions, any two judges may call the case for panel review and a panel is thereafter assigned to decide the appeal. This process helps assure uniformity in the application of the law. Circulating decisions of panels may be called for consideration by the full court when it is believed that the proposed opinion addresses issues of exceptional importance or creates a conflict in the Court's jurisprudence that must be resolved by the Court as a whole. Further, either party may request reconsideration and/or panel review of a single-judge decision once it is issued. Thus, the Court's rules permit single-judge decisions in an effort to expedite case dispositions, but safeguards exist to ensure that single-judge decisions are supported by existing precedents.

Following a final decision of our Court, an additional appeal to the U.S. Court of Appeals for the Federal Circuit may be filed. The Federal Circuit has limited jurisdiction and may review questions of law but not application of law to facts. Following review in the Federal Circuit, either

party may seek review by the U.S. Supreme Court, which over the past 25 years has considered four cases from our Court.

Since its creation in 1988, the Court has become one of the busiest federal appellate courts based on the numbers of appeals filed and decided per judge. Up until about ten years ago the Court received roughly 2,200 appeals annually. That number began to rise significantly in FY 2005, reaching a high of over 4,700 appeals filed in FY 2009. As I noted earlier, the number of appeals filed at the Court had trended down for a period, but it is again on the rise – a product of the number of decisions by the Board. For example, in FY 2013, the Board rendered about 42,000 decisions, but in FY 2014, the Board decided over 55,500 appeals. The Board projects that it will decide over 57,000 in FY 2015. The number of appeals being filed at the Court already is on a path to 4,500 or more this calendar year, with projections of continued growth thereafter.

III. The Veterans Courthouse Project

Although our Court has very fine office space and accommodations and although we have not budgeted for a Veterans Courthouse, we stand with Congress in its intent to build a "dedicated courthouse [] symbolically significant of the high esteem the Nation holds for its veterans [that would] express the gratitude and respect of the Nation for the sacrifices of those serving and those who have served in the Armed Forces, and their families" as stated in H.R. 3936 (2004), and "to provide the image, security, and stature befitting a court that provides justice to the veterans of the United States" as stated in S. 1315 (2008).

Until 1988, veterans remained the only group of citizens who could not routinely challenge adverse decisions on their claims in court, and today their Court is the only federal appellate court without its own courthouse. As some of you will recall, Congress was very close to appropriating

funds for the courthouse in our FY 2010 appropriation, but circumstances combined to warrant delay. Specifically, the General Services Administration's estimated cost virtually doubled from the time of our FY 2010 budget testimony before this committee and passage of the FY 2010 appropriations bill, and at the same time the Nation realized it faced a fiscal crisis.

Throughout this postponement period, we have maintained our support for the many Veterans Service Organizations and veterans at large who believe if any federal courthouses are to be funded for construction, their courthouse should be one of them. To that end, we are reinitiating our efforts to find a suitable and proper location for a Veterans courthouse that would help convey the country's gratitude to those who, in Abraham Lincoln's words, have "borne the battle, and for his widow, and his orphan."

IV. Conclusion

On behalf of the judges and staff of the Court, I express my appreciation for your past and continued support, and for the opportunity to provide this testimony today.