

OPENING STATEMENT OF
ROBERT A. MELLO FOR
JUDICIAL RETENTION HEARING

February 16, 2022

Mr. Chairman and members of the committee, thank you for this opportunity to meet with you regarding my declaration of candidacy for retention as a superior judge. I was sworn in as a superior judge on December 23, 2010, and I was retained by the Legislature in 2016, so I have been a judge for 11 years. Before that I had been a lawyer for 39 years, during which I worked as a trial lawyer almost exclusively. So, I have been involved full time with the courts and the law for some 50 years.

During the past 11 years, I have sat and heard cases as a superior judge in Addison, Chittenden, Rutland, Franklin and Grand Isle Counties. In my current rotation, I am the presiding judge in Washington County, where I am directly responsible for the civil docket and help support the two other judges who handle the criminal, juvenile and domestic dockets.

During my tenure as a judge, I have been called upon to hear and decide a wide range of cases in the civil, criminal, family, and juvenile dockets. The cases I have decided range from the routine to the highly complex. I gave you examples three civil rulings with my application. No matter what kind of case, though, I try to give them all the individual attention they deserve.

In addition, my superiors have assigned to me a number of especially complex cases of state-wide importance. For example, in February of 2019, I was assigned the responsibility for hearing and deciding several suits challenging statewide school district consolidation orders issued by the Board of Education. I expedited those cases and was able to issue decisions within just five months, in time to meet the Legislature's June 30th deadline for the implementation of the new law. My decisions in those cases were later affirmed by the Vermont Supreme Court.

More recently, in the fall of last year I was assigned the responsibility for hearing and deciding motions to dismiss filed in 35 Orleans County criminal cases, in which the defendants claimed that their

Constitutional rights to a speedy trial had been violated by delays allegedly caused by the judiciary's response to the COVID-19 pandemic. I heard the cases on November 5th, and then, over the next six weeks, I issued a series of individual decisions in each case. I granted the motions in 24 cases and denied the motions in 11 cases. Three appeals were filed, but they were all withdrawn, so my decisions in those 35 cases are now final.

I am also presently dealing with a flood of cases filed under a law passed last year by the Legislature, entitling inmates to appeal to superior court when their furlough has been revoked or "interrupted" for 90 days or more (28 V.S.A. § 724). Although these cases arise from all over the State, nearly all the appeals are being filed in Washington County because this is where the Prisoner's Rights Office is located. As a result, my small staff and I are buried with these appeals. More than 90 of them have been filed in my court so far. Because each inmate is claiming a right to be immediately released from jail, the cases obviously need to be decided promptly. Therefore, we need to give them priority on the docket, putting them ahead of all the other civil cases we have to deal with in Washington County. I have already issued decisions in 45 of these inmate cases since I got here in September, but my clerk tells me we have another 48 still pending, and the number keeps growing as more appeals keep getting filed.¹

In addition to hearing my own cases, I have also been helping other judges dealing with backlogs in their divisions. For example, when I was in Rutland Civil two years ago, I covered the relief-from-abuse docket for the family division judge there. When I was in Franklin Civil last year, I heard and decided 24 Franklin divorce and parentage cases for the overloaded family division judge, and I helped cover the criminal docket when the criminal division judge retired. And now that I am in Washington Civil, I am covering the mental health docket for the family division judge in Barre.

¹ These numbers were as of January 31, 2022.

I am also a member of the Civil Rules Committee, where I assist in formulating recommendations to the Supreme Court for changes and improvements in the civil rules of procedure.

Most of the cases that come before the courts are of little public importance, but they are always of great importance to the parties. Therefore, I strive to the best of my ability to consider each case carefully, impartially, respectfully, and in accordance with law. As a judge I have seen first-hand how profoundly the law can impact people's lives.

This has been especially so since the outbreak of the COVID-19 pandemic, during which people have struggled to keep their jobs, keep their housing, and feed their families. Residential eviction and foreclosure suits were stayed for a while, but the stays were lifted in July of last year, so those cases are moving forward again now. The COVID-19 pandemic also presented a variety of novel issues for us judges to deal with, and I gave you some examples of them with my application. But the COVID pandemic is not the only crisis facing Vermonters and the courts – we are also continuing to deal with the opioid epidemic. Let me give you an example from my own experience as a judge.

In my last assignment, I was also responsible for Grand Isle County, including the criminal and juvenile dockets there. One day a young woman was brought in on an arrest warrant. She had failed to appear for a hearing, violated her conditions of release, relapsed on heroin, and lost custody of her young daughter, who had been taken into DCF custody. The State's Attorney urged me to lodge her as a flight risk. She begged me to release her into the custody of her father. Her father was a perfectly responsible and law-abiding individual, but a previous judge had released her into his custody and she had absconded. So I denied her request, but I also told her that, if she was willing to get help with her substance use disorder, I would release her from jail so that she could attend a residential treatment program. She agreed.


Many weeks later, she returned to my courtroom after having successfully completed intensive residential treatment. She described how the treatment program had "turned her life around," and she

told me that I had “saved her life” by doing what I had done. She again asked me to release her into the custody of her father, and she also asked me to allow her to resume having contact with her boyfriend (the father of her young daughter) so that she could start to put her family back together again. I agreed to release her to the custody of her father, because we had clearly gotten her attention and she had clearly succeeded in her substance use treatment. I also told her that I fully understood how very important it was to put her family back together again. However, I denied her request for permission to immediately resume contact with her boyfriend, because he was known to have been a heroin user and associating with him could jeopardize the progress she had made in her own recovery. I told her, however, that I would reconsider that ruling if I received proof that the boyfriend was no longer using. I am very glad I made that decision because a few weeks later I learned that the boyfriend had been found at his home unresponsive due to an overdose. These are some of the kinds of decisions I am called upon to make as a Vermont trial court judge.

I am deeply grateful to my staff and colleagues for their hard work and dedication during these difficult times. I am also very grateful for the 54 attorneys and 17 staff members who took the time to fill out the questionnaires that you sent them. I am gratified and humbled to see that 98% of the attorneys and 100% of the staff support my retention.

I believe in public service. There is no higher calling in the law than to be a judge. My entire career for the past 50 years has been in the law, first as a lawyer for and now as a judge. I am deeply grateful for the opportunities Vermont has given me. I continue to feel an obligation to give back in return, and the place where I know I can make the greatest difference for those who must appear in court is as a judge. This is why I am applying again for retention.

Thank you very much.



Robert A. Mello

