



February 2, 2010

The Honorable Robin Jean Davis
Chief Justice
Supreme Court of Appeals of West Virginia
Capitol Complex
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Dear Chief Justice Davis:

You have declared that the West Virginia Chamber of Commerce is “flat-out wrong” in its statement that civil and criminal litigants do not have an appeal of right from trial court decisions, which they believe are incorrect and unlawful. “The right to file an appeal already exists,” you said, as a newspaper today attributes to you during yesterday’s joint meeting of the House and Senate Judiciary Committees.

We respectfully disagree, and we note that your surprising declaration contradicts the West Virginia Supreme Court’s own published statements on the issue. For example: “Because the Court’s review of all petitions is discretionary, some cases are disposed by entry of a refusal order . . . Other cases are granted and set for argument . . .”¹

Among others who would disagree with you are members of the West Virginia Independent Commission on Judicial Reform. These include former U.S. Supreme Court Justice Sandra Day O’Connor, a former W. Va. Supreme Court Justice and other eminent lawyers from the state’s bar. Here are excerpts from the commission’s final report:

“The Supreme Court of Appeals serves as the state’s only level of appellate review and maintains a completely discretionary docket, with no appeal as of right.”²

“[T]he Commission acknowledges that the decision to grant an appeal is typically within the exclusive constitutional discretion of the Supreme Court of Appeals.”³

¹ 2007 *Statistical Report*, Supreme Court of Appeals of West Virginia.

² *Report of Independent Commission on Judicial Reform* at p. 29, Nov. 15, 2009 (citing W.Va. Const., Art. VIII § 4)

³ *Report of Independent Commission Judicial Reform* at p. 38.

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There also are other authoritative sources that disagree with your public statement. In one of its reports, the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics wrote: “Generally, a court of last resort in a state with no other appellate court has mandatory jurisdiction for most categories of appeal. There are exceptions to this rule such as West Virginia which has discretionary jurisdiction.”⁴

And we respectfully ask, if West Virginia already has an appeal of right, then why did the W.Va. Independent Commission on Judicial Reform call for the creation of one? The Commission wrote:

“Accordingly, the Commission respectfully urges that such a right be extended to all litigants either through legislative enactment or, if necessary, as part of the development of court rules and processes for the implementation of intermediate court of appeals.”⁵

Given this widespread belief that the West Virginia Chamber shares, if nothing else, your statements on February 1 have caused great confusion. They also have opened wide what the West Virginia Chamber believes has become a wonderful opportunity to engage the public in an informed discussion and debate. Your call for more transparency in our courts supports this.

The opportunity invites these and other questions:

What does an appeal of right mean and what doesn't it mean? Why do so many people, including citizens, lawyers and even experts outside of West Virginia, believe that West Virginia does not have an appeal of right?

Why did Governor Manchin, in his 2010 State-of-the-State Address, announce that your court was going to issue rules to “ensure there will be full appellate review?”

Is our Supreme Court, as the busiest appellate court in the nation, simply too busy to fully review requests for appeals and to issue written decisions on its reasoning? Is the cause of civil and criminal justice served in West Virginia's appellate system when there is a mounting public perception that it is not?

⁴ *State Court Organization 2004*, David B. Rottman, Project Director and Shauna M. Stickland, Research Analyst (August 2006, NCJ 212351) at p. 131.

⁵ Report at p. 38.

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The West Virginia Chamber of Commerce looks forward to continuing this important conversation about what its thousands of members agree is one of the most important issues that confronts progress and prosperity for all West Virginians.

Sincerely,

Steve Roberts
President