

Appeal of Right

Issue

West Virginia is the only state that does not provide an appeal of right from a final judgment in a lower court in either civil or criminal cases. This significantly tarnishes the state's reputation in terms of its legal and judicial climate.

Background

Appellate review is an essential component to a fair and balanced judicial system. Appellate review creates a rational, consistent and stable jurisprudence or body of law within a jurisdiction. Appellate review, in its appropriate role, boosts public confidence that the courts even-handedly apply the law.

Remarkably, West Virginia is the last state with a 100 percent discretionary appellate docket.....meaning our state is the only one without an appeal of right for civil and criminal cases. The West Virginia Supreme Court of Appeals currently accepts less than 27 percent of requests for appeal in civil cases according to the 2007 Statistical Report of the West Virginia Supreme Court. In essence, West Virginia individual circuit court is the court of last resort for most West Virginians.

The mere existence of an appeal of right would materially improve the quality and consistency of rulings and decisions of West Virginia's circuit courts. Additionally, West Virginia's circuit courts would benefit from the articulation of law and guidance by the Supreme Court on complex issues raised in today's litigation. Independent review by an appellate court is required to clarify applicable legal principles, unify precedent and stabilize the law. There are institutional differences between trial and appellate review and those differing competencies should tip the scale in favor of strict, exacting appellate review. The great civic value of a written judicial opinion exceeds the case from which it arises: It is exposed in the recognition that in a government of laws, ordinary people have a right to equal protection under and of the laws.

Some might resist or even oppose the creation of an appeal of right in West Virginia. They perhaps fear cost and delay to prevailing litigants. Establishing an appeal of right together with corresponding procedural and substantive protections, judicial apparatus and financial resources will directly redress their concerns.

Whether to provide for a right of appeal within the current structure of the judiciary or a modification remains open to reasonable discussion. Debate on the issue must not be reserved to bench and bar alone. The people and institutions whose lives, liberty and property are intimately affected in the courts must participate in the deliberations on the manner in which West Virginia will guarantee the an appeal of right.

Ensuring appeals of right so that West Virginia's judiciary will provide the appropriate level of appellate review is vitally important to the State and its citizens.

Chamber's Position:

The West Virginia Legislature should enact an appeal of right from all final judgments in the Circuit Courts.

Other Resources:

Final Report - West Virginia Independent Commission on Judicial Reform

<http://www.judicialreform.wv.gov/reports/Documents/FinalReport.pdf>

The Rule of Law -- Chapter 10: Appealing Changes: A Case for Expanding Appellate Review in West Virginia's Judiciary

<http://www.be.wvu.edu/divecon/econ/sobel/TheRuleOfLaw/Chapter%2010.pdf>