



February 3, 2010

AN OPEN LETTER TO ALL PERSONS INTERESTED IN THE SUPREME COURT'S  
REVISION OF THE RULES OF APPELLATE PROCEDURE,  
IN RESPONSE TO AN OPEN LETTER TO THE CHIEF JUSTICE BY STEVE ROBERTS ON BEHALF  
OF THE WEST VIRGINIA CHAMBER OF COMMERCE

Dear Mr. Roberts:

The Chief Justice asked me to respond to your letter of February 2, 2010.

In her address to the Joint Judicial Committees of the House and Senate, the Chief Justice was very clear that the proposed new Court rules will provide:

- (1) All petitions for appeal from a final circuit court order will be accepted for complete review.
- (2) All parties will be required to participate and file legal briefs.
- (3) The Court will decide every case on the merits after considering the legal positions of the parties and completely reviewing the record.

Allow me to elaborate. Your letter underscores the deep misunderstanding that members of the public have about proceedings in this Court. To reiterate what the Chief Justice stated in the Legislative chamber: under current law, every West Virginia litigant has the *absolute right to file an appeal* from a final decision of the circuit courts, and from administrative tribunals as provided by law. To the extent that any person or group states otherwise, they are, as the Chief Justice said, flat-out wrong.

Both the Governor and the Chief Justice have publicly stated that the revision of the appellate rules under consideration by the Court will contain procedures to ensure that all properly filed appeals from decisions of the circuit courts will be fully reviewed, *including decisions on the merits*, in every single case. Of course, this does not mean that every appeal will result in an oral argument, or will result in an opinion that makes precedent statewide. No appellate court in the nation permits oral argument in every case. No appellate court in the nation issues a published opinion in every case. The Court does not intend to depart from this nationwide practice.

Under the current process of appellate review as set forth in the Rules of Appellate Procedure, *every* appeal is thoroughly reviewed, including the full record as presented by the petitioner. After a full review of the issues presented, the Court may refuse the appeal in a short order that does not speak to the merits of the issues, or it may set the case for argument and later decide the case by a full opinion.

As the Chief Justice stated, the revisions under consideration will end the Court's prior practice of issuing refusal orders that do not explain the reasons for the Court's decision. By issuing a decision on the merits in every case, an appeal of right is provided in a timely manner without undue delay or cost to the parties involved.

As the Chief Justice also stated, the revised rules will provide greater transparency. Specifically, the revised rules under consideration include decision criteria that the Court will apply at critical points in its consideration of a case. The revised rules will more clearly outline each point of the process, and will encourage better public confidence in appellate court proceedings.

In fairness, the revision process must take into account the full range of cases considered by the Court. Although this fact is frequently overlooked, civil appeals involving business concerns are only one part of the Court's docket, which includes abuse and neglect cases, criminal cases, prisoner cases, *pro se* appeals, family court cases, administrative cases, original jurisdiction cases, and certified questions. The revisions under consideration will apply to *all cases*, and will be intended to ensure a full and fair review without the delay or cost that would be associated with an entirely new level of courts in this State. Barring unforeseen developments or interruptions, the Court intends the revised rules to be fully implemented later this year.

We share a common goal of fostering better understanding about the appellate process in West Virginia. Your input on these issues is very much appreciated, and the Court looks forward to receiving comments from you once the rules have been issued for public comment. The Court must complete this important work. Until that time, as I'm sure you will understand, the Court will not provide any further unnecessary public statements.

Sincerely,

//s// Rory L. Perry II  
Clerk of Court