STUDENT READING
HANDOUT # 2

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

General Information

The Supreme Court of Appeals of West Virginia is the highest court in West Virginia. It is similar to the Supreme Court of the United States, the highest court in the nation. The Supreme Court of Appeals derives its existence and authority from the West Virginia Constitution. It is comprised of five justices who are elected in partisan election and serve 12-year terms. To be eligible to serve on the Supreme Court of Appeals, one must have practiced law for 10 years or more.

The position of chief justice rotates yearly and is based on seniority. The chief justice is the administrative head of the state court system. He or she has authority to assign special and retired judges, and to transfer judges to equalize docket imbalances.

Jurisdiction

The Supreme Court of Appeals of West Virginia sits en banc, meaning that the entire court hears the oral arguments for a case. The Court has both appellate and original jurisdiction. Appellate jurisdiction is the power of the Court to review a case that has already been decided by a lower court. The scope of the Court's appellate jurisdiction may be changed by legislation. Original jurisdiction gives the Supreme Court of Appeals power to hear cases that can be filed originally in the Supreme Court and is more limited than appellate jurisdiction. Examples of subjects over which the Supreme Court of Appeals has original jurisdiction include matters involving writs of habeas corpus, mandamus, and prohibition. These terms are defined in the glossary in your student handbook.

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The Supreme Court of Appeals is the court of last resort and the final arbiter of disputes arising under state law. It reviews judgments and rulings of the lower state courts, including the circuit courts. Supreme Court of Appeals decisions interpret state law and set standards, or precedents, that must be followed by all West Virginia state courts in future similar cases. No other court has jurisdiction to review decisions of the Supreme Court of Appeals on issues of state law. However, the United States Supreme Court is the court of last resort and the final arbiter of disputes arising under federal law or the United States Constitution, and may review decisions of the Supreme Court of Appeals in which federal law issues are decided.

Appeals brought to the Supreme Court of Appeals do not involve a trial of the case in the sense that no witnesses appear and no evidence is taken. Instead, the Supreme Court of Appeals reviews the record of the trial, which includes a transcript of the evidence, the orders entered by the court below, and the documents filed by the attorneys in the court below. The Supreme Court of Appeals then corrects any errors the lower court made in the application of law, such as rulings on the admission of evidence or interpretations of a law passed by the West Virginia Legislature. Either the plaintiff or defendant may appeal in a civil case. In a criminal case, the defendant may always appeal a conviction, but the state may only appeal certain rulings in criminal cases. For example, the state may never appeal a jury verdict of not guilty.

Gaining An Appeal

To gain an appeal, the party disagreeing with the lower court's decision must file both a petition for appeal and the record with the Supreme Court of Appeals. The Supreme Court of Appeals is not required to grant an appeal and review a case. Instead, the Court exercises what is known as discretionary review. Discretionary review means that a party cannot automatically appeal to the Supreme Court of Appeals, but must seek permission to appeal. The party disagreeing with the lower court's decision must file a petition for permission to appeal. The petition contains a statement of the issues involved in the case and the reasons why the Supreme Court of Appeals should grant review. Some of the more common reasons that prompt the Court to grant review include: 1) the need to settle a question of law about which there is confusion; 2) the need to rule on a question of law that has not been ruled upon by any other West Virginia court; and 3) the need to correct an error in application of the law.

The party satisfied with the lower court's decision files a response to the petition. In the response, the party opposing an appeal discusses the reasons why the Court should not grant review, and attempts to convince the justices to uphold the decision of the lower court.

The Supreme Court of Appeals holds a conference during which the justices discuss and decide whether to grant, accept, or refuse the petition. If a petition is

"accepted," that means that the petitioner must present an oral argument before the Court decides whether to grant the petition. If a petition is "granted," the Court will hear the case based on the pleadings. Permission to appeal will be granted if three of the five justices vote yes. If a petition is denied, the party seeking an appeal has no other avenue of relief unless an issue of federal law is involved, in which case, the party may seek an appeal with the United States Supreme Court. The chances of gaining review with the United States Supreme Court are very slim.

In 2003, the Supreme Court of Appeals received 2,865 new petitions for appeal. Of that number 1,572 were appeals for the administrative agency that hears workers' compensation cases. The Court agreed to hear about 32% of all civil appeals, 17% of all criminal appeals, and 34% of all workers' compensation appeals.

The Court disposed of 2,245 cases in 2003. The Court used a variety of disposition methods, ranging from signed opinions to orders.

Processing An Appeal

An "appeal" is actually a two-stage process known as the petition phase and the appeal phase. If a petition for appeal is granted, the party seeking an appeal - the appellant - then files a supplemental brief which discusses in depth the issues in the case and lists and explains the laws and case decisions that support the appellant's arguments. The party opposing appeal - the appellee - has a specific time period after the appellant's supplemental brief is filed to file an answer brief. The appellant then has a short period of time within which to file a reply brief in response to the appellee's answer. If neither of

the lawyers request oral argument, the case will be decided by the Court on the basis of the record and the briefs. If the case is argued, appellate court rules give the appellant up to 20 minutes to present its side of the case to the entire Court. The appellee then has up to 20 minutes to respond. The appellant then has up to an additional 10 minutes to reply.

During oral arguments, the lawyers highlight key points of their positions and answer questions from the justices. In deciding the cases, the five justices read and study the briefs submitted by the parties, as well as the record. This requires a great deal of reading. Only issues presented in the briefs and at oral arguments will be considered, but the justices perform additional research on their own during the decision making process. Of course, not every error in application of law will result in a reversal of the judgment or ruling that is the subject of the appeal. Only if the error had an impact upon the judgment of the lower court will reversal be ordered.

After completion of oral arguments, the justices meet in conference to discuss the views of the members of the Court and to take a preliminary vote on the decision in the case. The chief justice presides, and in general, other members of the Court express their views. The chief justice assigns the case to one of the justices who has voted in the majority.

Preparation of an Opinion

After the case is assigned, a proposed opinion will be prepared. An opinion is a statement of the Court's decision and a statement of the legal reasons supporting the decision. The written opinion will either affirm, which means that the judgment or ruling of the lower court is correct; reverse, which means that the judgment or ruling of the lower

court is rejected; modify the judgment or ruling of the lower court that is the focus of the appeal, or remand the case to the lower court for the taking of more evidence. Once prepared, the opinion is circulated to the other justices by the author before the Court's conference. Either before or during the conference, other justices may make suggestions for modifying, adding to, or deleting from the proposed opinion. Concurring opinions and dissenting opinions are circulated as early as possible by the justices who agree or disagree with the proposed opinion. A concurring opinion is one in which a justice agrees with the result reached by the proposed opinion, but not for the same reasons given in the proposed opinion. A dissenting opinion is one in which a justice disagrees with the result reached by the majority of the other justices. At least three of the five justices are required to constitute a majority.

Concurring and dissenting opinions must be circulated after the proposed opinion is circulated. Any justice, however, may request that a case be passed at conference for a reasonable time for further study.

Once the proposed opinion has been discussed and approved by the members of the Court, the opinion is filed in the Clerk's Office. After filing, the Clerk's Office releases opinions on the most immediate work day, typically at 10:00 a.m. and 3:00 p.m. The Clerk's office releases concurring and dissenting opinions any time after the majority opinion is released. If 30 days have passed and neither party has asked the Court to rehear the opinion, the opinion is published by the West Publishing Company in the Southeastern Reporter, which is found in law libraries.