

VIRGINIA'S INTERMEDIATE COURT OF APPEALS: THE NEW COURTS SCOPE AND POWER

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The Scope of the Problem: Appellate Inundation

The increased number of lawsuits brought in state trial courts in the past quarter century has strained the capacity of state supreme courts to hear all valid appeals. Meritorious petitions for appeal meet denial or cursory decisions which fail to develop important legal doctrine. As a result, many states have enacted legislation creating intermediate appellate courts to reduce the burden on the state supreme court in order that that tribunal might fulfill its obligation to settle developing areas of law. In general, the intermediate courts in the various states hear appeals that turn on reversible error in the trial judgment. Harder questions of constitutional, statutory, and common law interpretation pass to the state supreme court for hearing. Weisberger, pp. 239-240.

The Virginia Legislature created the Court of Appeals, effective January 1, 1985, in response to a fourfold increase in the number of petitions to the Supreme Court during the past two decades. Brissette, p. 209. Some controversy surrounded the reformation of the appeals process, including practitioners' concerns over the increased costs of more frequent and dual appeals. Some fear existed that important cases worthy of consideration by the Supreme Court might meet final judgment in the lower court. Scalia and Lilly, pp. 56-60. The statutory scheme promulgated by the Legislature finesses these difficulties

by granting the Court of Appeals broad jurisdiction and power of finality while reserving to the Supreme Court discretionary review of all Court of Appeals decisions. Va. Code Sect. 17-116.05-.08. At this early date in the Court of Appeals' history, the new Court appears ready to manage the flood of petitions for appeal with minimum disruption of Virginia litigation.

The Court of Appeals' Jurisdiction and Discretionary Review

The Intermediate Court of Appeals has original jurisdiction in matters of contempt, injunctions, writs of mandamus, prohibition and habeas corpus. The statute grants appellate jurisdiction for appeals from Circuit Courts' review of administrative agency determinations, final decisions of the Industrial Commission of Virginia, and final judgments from the Circuit Courts concerning all domestic relations cases. Further, all convictions for crimes or traffic infractions are appealable to the new court, except where the death penalty arises. (Death sentences are appealable directly to the Virginia Supreme Court.) Va. Code Sect. 17-116.04-.05.1. These appeals are of right. Va. Code Sect. 17-116.05.2. The statutory scheme provides that the decision of the Court of Appeals shall be final, without appeal of right to the Supreme Court in traffic and misdemeanor convictions having no jail sentence, administrative or Industrial Commission cases, or domestic relations cases. Va. Code Sect.-17-116.07.

A problem inherent in dividing appellate jurisdiction between an intermediate court and the supreme court of a state arises because relative importance of legal issues cannot be consistently based upon dollar amount or subject matter. "All tort cases are not of negligible social importance; nor are all cases raising constitutional issues of general public concern--if for no other reason than that the issue is frivolous." Scalia and Lilly, pp. 47-50. Any type of case can present a legal issue

worthy of determination of the state supreme court. Intermediate court jurisdiction must not preclude discretionary high court review of socially important cases. Judge Scalia and Professor Lilly suggested in 1971 that two factors be considered in weighing the "importance" of a case for discretionary review of the intermediate court's decision. First, the significance of the appeal to the entire legal system, such as a case where limited private interests turn on an unsettled point of state law, needs to be considered. Secondly, the importance of the appeal to the involved parties should affect the high court's discretionary review. An appealed death sentence or huge civil damages award may turn on only a factual distinction, but the weighty individual interests involved may merit review in the state's highest court. *id.* The Virginia Legislature allowed for certification of appeals to the Supreme Court on motion of the Court of Appeals or on the motion of the high court itself, within the Supreme Court's discretion. Va. Code Sect. 17-116.06. This statutory feature ensures that important cases meriting high court review are not blocked by an overly deterministic legislative scheme.

Placing final review of all appeals within the discretion of the Virginia Supreme Court alleviates the burden on litigants of repeated appeals as of right. Resistance to this type of appellate reform arises from the ranks of trial attorneys as the spectre of protracted appeals clogs the courts and delays final decisions. Allowing a second appeal to the Supreme Court only when that body determines such review warranted in the particular situation makes the vast majority of Court of Appeals decisions final, while assuring that important cases are certified to the Supreme Court. This is the model suggested by the American Bar Association, and followed by the majority of states which have an intermediate division. Brissette, p. 224. This model also allows appellate development of factual and legal issues in specific cases before the Supreme Court passes judgment on the significance of the case. *id.* at 229. The Florida scheme allows

parties to petition the intermediate court to bypass that court and appeal directly to the Florida Supreme Court. If the intermediate court determines that the appeal merits high court review, they grant the bypass petition. This scheme runs the risk that legally significant appeals may be held in the intermediate court by that tribunal, without oversight by the highest court. *id.* at 225. The Virginia statute ensures that all petitions will be examined for merit by the Supreme Court, while maintaining the docket control of channeling through the Intermediate Court of Appeals.

Finally, the statutory scheme enacted in Va. Code Sect. 17-116 provides the element of control required by the late expansion of Virginia's judicial process. The crucial discretionary oversight of all appeals heard in the Court of Appeals provides a simple and direct method of certifying legally significant appeals to the Supreme Court. The granting of appellate jurisdiction in the Court of Appeals creates an organized management of an ever-increasing number of appeals of trial judgments within the Commonwealth. This reformed appellate process ensures ordered control of a burgeoning docket while vesting final judgment in what is legally significant in Virginia case law firmly in the Virginia Supreme Court.

VIRGINIA'S INTERMEDIATE COURT OF APPEALS:
KEY TO TEXTUAL NOTES

Brissette, The Virginia Judicial Council's Intermediate Court Proposal, 16 U. Rich. L. Rev. 209-234 (Fall 1981).

Lilly and Scalia, Appellate Justice: A Crisis in Virginia?, 57 Va. L. Rev. 3-64 (1971).

Weisberger, Appellate Courts: The Challenge of Inundation. (Symposium: State Court Reform), 31 Am. U.L. Rev. 237-253 (Winter 1982).

The author wishes to apologize for the informal nature of these notes. Production exigencies required that these be presented in this format.