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West Virginia Governor Appoints Members of State's New Intermediate Court of Appeals

On April 8, 2021, West Virginia Governor Jim Justice signed into law Senate Bill 275 (WV Appellate Reorganization Action of 2021) which established a West Virginia Intermediate Court of Appeals. West Virginia is one of only a few states currently without an intermediate level court of appeals.

When is this effective?

The new West Virginia Intermediate Court of Appeals must be operable on or before July 1, 2022.

Who are the Judges?

The new law established a three-judge panel that will serve ten-year staggered terms. On December 28, 2021, Governor Justice appointed the first three judges who are still awaiting confirmation by the Senate. After the terms of these three expire, the judges will be elected in a nonpartisan election. The three judges that were appointed by Governor Justice are as follows:

- Thomas Scarr – Mr. Scarr will serve a 2.5 year term that will end on December 31, 2024. Mr. Scarr is a member at Jenkins Fenstermaker. Per his firm's website, Mr. Scarr practices civil litigation, labor and employment law, and federal white collar criminal defense. His litigation and trial experiences include handling commercial and construction disputes; personal injury litigation; premises liability disputes; product liability and toxic tort cases; deliberate intent claims; and medical, legal, accounting, and other professional liability matters. He also has experience before administrative bodies such as the National Labor Relations Board, the Occupational Safety and Health Administration, the Equal Employment Opportunity Commission, and the West Virginia Human Rights Commission.
- Dan Greear – Mr. Greear will serve a 4.5 year term that will end on December 31, 2026. Mr. Greear is chief counsel to House of Delegates Speaker Roger Hanshaw. He previously served as chief of staff for the House in 2014. He was then selected as an interim Kanawha Circuit Court judge in 2018 and returned as chief of staff for the House later that year.
- Donald Nickerson Jr. – Mr. Nickerson will serve a 6.5 year term that will end on December 31, 2028. Mr. Nickerson is counsel at Spilman, Thomas & Battle. Per his firm's website, his primary area of practice is corporate and business law, including transactions, mergers and acquisitions, and real estate. He also practices in the area of trust and estate planning and administration. His experience also includes preparing certified mineral title opinions, drilling and royalty opinions, and title examinations, with an emphasis on generating title reports with curative recommendations.

What type of cases will the Intermediate Court of Appeals hear?

The Intermediate Court of Appeals has no original jurisdiction. It is comparable to Pennsylvania's Superior Court and Commonwealth Court. The Intermediate Court of Appeals will hear the following cases:

- appeals from a final judgment or order of the circuit court in a civil case entered after June 30, 2022
- appeals from a final judgment or order of a family court entered after June 30, 2022, except for appeals from domestic violence proceedings, which will still go through circuit court

- appeals from a final judgment or order of the circuit court in a guardianship or conservatorship matter entered after June 30, 2022
- appeals from a final judgment or order of state agencies or administrative law judges entered after June 20, 2022
- appeals from decisions or orders issued by the Workers' Compensation Office of Judges after June 30, 2022, until its termination, and from orders or decisions of the Workers' Compensation Board of Review after June 30, 2022

The Intermediate Court of Appeal does NOT have appellate jurisdiction over the following cases:

- appeals from a final judgment or order issued in any criminal proceeding
- appeals from a final judgment or order issued in any juvenile proceeding
- appeals from a final judgment or order issued in a child abuse and neglect proceeding
- appeals from an order of commitment
- appeals from any proceeding of the Lawyer Disciplinary Board
- appeals from any proceeding of the Judicial Investigation Board
- appeals from a final judgment or order of the Public Service Commission
- an Interlocutory Order
- certified questions of law
- appeals from a decision or order of another court regarding an "extraordinary remedy"

However, the West Virginia Supreme Court is permitted, on its own accord, to obtain jurisdiction over any civil case appealed to the Intermediate Court of Appeals. Also, a party may file a Motion for Direct Review by the Supreme Court within 20 days after a petition for appeal is filed with the Intermediate Court of Appeals. The Supreme Court may grant the motion if the appeal involves a question of fundamental public importance and involves exigencies in which time is of the essence.

How do I file an appeal?

The Clerk of the Supreme Court will also be the Clerk for the Intermediate Court of Appeals. All notices of appeals, petitions, documents, and records in connection with an appeal shall be filed in accordance with the rules promulgated by the Supreme Court of Appeals. All appeals and other related documents shall be filed by electronic means, when available. The filing fee is \$200.

Can I appeal an Order of the Intermediate Court of Appeals to the Supreme Court?

You can still file an appeal to the West Virginia Supreme Court but the Supreme Court will now have discretion to grant or deny certiorari.

Where can I find the law to review?

The citation is West Virginia Code § 51-11-1 to § 51-11-13.



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