



Court of Appeals

Memorandum

COPY

To: Presiding Judge P.D. Smith
From: *WLM*
William L. Martin, III
Subject: Ninth Judicial Administrative District
Liaison Judge
Date: May 7, 2007

Attached please find a letter I received from Chief Judge David E. Barrett acknowledging your appointment as Liaison Judge to the Ninth District and informing you of the next meeting.

Thank you.

/ld

Attachment

February 18, 2010

This is a summary of some of the thoughts I expressed on budget matters at the meeting today with the Chief and Bill.

Senator Cowsert's comment at our budget hearing and the one that followed for the superior courts showed that as long as judges indicate that they can "get the job done" at any minimum level, there's no perceived need to stop cutting budgets. Somehow, we have to make the point that with each of our cases, it's not just a matter of "get it out" but hopefully, "get it right". When we cut personnel and/or furlough staff, we reduce the quantity and quality of review of individual cases and thereby increase dramatically the chances that a case will be decided wrongly. This has real consequences for real people, both in criminal and civil cases. Obviously, it means that some criminal cases will result remaining in prison even though their convictions should have been reversed. But it also means that in some other cases, criminal convictions that should be affirmed will be reversed instead, resulting at least in another trial and perhaps resulting in their release.

On the civil side, not only is there the potential for incorrect results, but probably even more important business interests there is the likelihood of very inconsistent results in similar cases. Nothing in the legal arena is more troubling to business than unpredictability. Chamber of Commerce types should understand that this can have an adverse effect on business investment in the State.

Almost all aspects of this Court's organization and operation can be seen as unwelcome but necessary compromises with time and volume: limited time for a decision because of the absolute deadline of the two-term rule; and overwhelming volume that makes us one of the busiest appellate courts in the State and sends to us roughly 85 percent of the State's total appellate business each year. We decide far

more cases than the Supreme Court and fill more than four published volumes of opinions to each one of theirs. Even with this, the disparity in caseload is understated, because we have far more unpublished opinions in cases decided by order (Rule 36).

Our Court does not operate in the way any of us believe an “ideally” appellate court should operate. We limit the availability of oral argument, the time lawyers are given for oral argument, the number of pages they can have in their briefs, and we constrict the briefing schedule more than any other appellate courts. Probably most importantly, we do not routinely conference with each other in deciding our cases instead, our “culture” is one in which we depend heavily on the written word through circulated memoranda. That’s not ideal but again, it’s a compromise with time and volume. We are always under deadline pressure. I think it says a great deal that once we get past the middle of a term, my first act on arriving at the office almost every morning is to check the overall distress list for the Court. It always has concerned me that almost makes it seem as if we focus more on numbers than we do on issues or outcomes, but that is the hand we have all been dealt in the culture we are in.

Unlike other intermediate appellate courts around the country, our Court went many years without adding to the number of judges. Instead, the General Assembly funded additional staff as a less expensive alternative. Because of that, we now have a lower ratio of appellate judges to state population than any other intermediate appellate court in the country. (There are some small population states that have no intermediate appellate court, but they are very few; all that have an intermediate appellate court have more judges as a ratio of state population than we do. I know for certain this was true when I was Chief, but it should be verified before it is used in any discussions.)

There are some advantages to the way our Court is organized. I am pretty sure

I am correct that every state with greater population than ours is organized in districts in some way, and many states smaller than ours is also organized in districts. Again, this should be verified before it is used. The advantage of our single Court operating in a single location is that we do not have the same potential for conflicts in decisions as states with districts. The fact that we operate in four panels presents a challenge for maintaining consistency in our decisions, but we address that by having an internal database of our own opinions that is available almost immediately for our staff members to check. To the extent it's used and used properly, it greatly reduces the potential for inconsistent decisions by different panels. Obviously, furloughs and staff reductions and limited time for work on individual cases inevitably combine to make it less likely that this resource will be used to best advantage. In other words, we probably are going to have more inconsistent opinions for lawyers and trial judges to puzzle over.

To the extent Legislators are concerned about the effects of appellate decisions on business, they should know that we handle far and waive the great majority of business disputes that are appealed. In addition, the vast majority of our decisions are final because the Supreme Court simply doesn't – and can't – grant cert in more than a relative handful. On a day to day basis, our Court has far more impact on the business community in Georgia than does the Supreme Court.

We've also seen that sometimes when the Supreme Court overrules case authority from our Court, it's only after our decision has stood as precedent for a number of years. Again, this plays into the kind of lack of predictability that is so difficult for businesses to deal with. If the quantity and quality of review given to business cases is reduced, then there is greater potential for businesses to be operating for years under what the Supreme Court ultimately decides are the “wrong set of rules”.

These are just a few things. I am sure there are others that others can think of, and I am sure that others can more effectively elaborate on these things that I have here.

I will be glad to discuss these matters at any time, but obviously, I should not be the one to make a presentation to a Legislative Budget Committee.

I hope this helps a little.



SUPERIOR COURTS
ENOTAH JUDICIAL CIRCUIT OF GEORGIA

DAVID E. BARRETT, Chief Judge

114 COURTHOUSE STREET, BOX 2
BLAIRSVILLE, GEORGIA 30512

TELEPHONE: (706) 439-6100
FACSIMILE: (706) 439-6099

April 27, 2007

Mr. William L. Martin, III
Administrator/Clerk
Court of Appeals of Georgia
47 Trinity Avenue
Suite 501
Atlanta, Georgia 30334

Dear Mr. Martin:

Thank you for your letter of April 12 concerning Judge J. D. Smith as liaison to the Ninth Judicial Administrative District. We were honored to have Judge Smith with us at our Ninth District Spring meeting on April 19.

Our next meeting is on Monday, July 23 at St. Simons at the Council of Superior Court Judges meeting. We will be inviting Judge Smith to attend that meeting as well.

Again thanking you for your letter, I am

Very truly yours,

David E. Barrett, Chief Judge
Superior Court

DEB/jmv

xc: Chief Judge Anne Elizabeth Barnes
Presiding Judge J. D. Smith
Mr. Steven M. Ferrell, District Court Administrator

DAVID E. BARRETT, Chief Judge
SUPERIOR COURTS

ENOTAH JUDICIAL CIRCUIT OF GEORGIA

114 COURTHOUSE STREET, BOX 2
BLAIRSVILLE, GEORGIA 30512

RECEIVED IN OFFICE

2007 MAY -3 PM 3:45

William L. Martin, III

CLERK/COURT ADMINISTRATOR
COURT OF APPEALS OF GA.

Mr. William L. Martin, III
Administrator/Clerk
Court of Appeals of Georgia
47 Trinity Avenue
Suite 501
Atlanta, GA 30334



02 1A \$ 00.39⁰
0004375704 MAY 02 2007
MAILED FROM ZIP CODE 30512

30334+5006

