




MPJRA

Appellate Procedure

Presented by: Liisa R. Speaker



Overview:

- When is there an Appeal by Right?
 - Timing to file an Appeal by Right.
 - Who files the appeal and what happens after case initiation?
 - Stays pending appeal.
 - What about Applications for Leave to Appeal?
 - Process of appeal until decision.
 - Going to the Supreme Court.
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**When is there an
Appeal by Right?**



Child Welfare

- Any order removing a child from parent's care and custody. MCR 3.993(A)(1).
- Initial order of disposition following adjudication. MCR 3.993(A)(2).
- Order terminating parental rights. MCR 3.993(A)(4).
- Any order involving Indian child that is subject to potential invalidation under MIFPA. MCR 3.993(A)(6). Note there is a long list of **examples** of types of orders that might trigger an appeal under (A)(6), **including but not limited to** termination of parental rights, removal of child from home, and intervention.

Adoption

- Any order in an adoption case. MCL 710.65(1).
- Most common types of orders:
 - granting or denying Stepparent adoption. 710.51(6);
 - terminating or refusing to terminate putative father's parental rights. MCL 710.39; and
 - order related to whether MCI decision was arbitrary and capricious. MCL 710.45.



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Guardianship

- MCR 5.801(A)(3) – “a final order affecting rights of an adult or a minor guardianship proceeding under EPIC.”
- But what is a “final order”?
 - appointing guardian;
 - removing guardian;
 - modifying guardianship.



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Mental Health Code

- MCR 5.801(A)(4) – “a final order affecting the rights or interests of a person under the Mental Health Code”
- But what is a “final order?” There seems to be many options.
 - involuntary commitment;
 - guardianships under the Mental Health Code;
 - medical procedures.



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Other Probate Court orders

- MCR 5.801(A) – laundry list of orders that are appealable by right in a decedent’s estate, trust estate.
- There is also an appeal by right from a “final order” in a civil action arising out of probate.
- Most common orders are:
 - appointing or removing a fiduciary;
 - interpreting a governing instrument;
 - determining validity of governing instrument.

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Juvenile Delinquency

- Warning this area of appellate procedure is **super confusing and unclear**.
 - Order of disposition placing a minor under the supervision of the court MCR 3.993(A)(3).
 - Order removing juvenile from parents. MCR 3.993(1) .
 - Any final order. MCR 3.993(7). This would include an order of disposition (the “sentence” in a juvenile case), which allows the appellant to challenge both the disposition and the adjudication
 - Order granting motion to waive jurisdiction. MCR 3.950(E)(1) – treated as an interlocutory criminal appeal



Timing to file an Appeal by Right

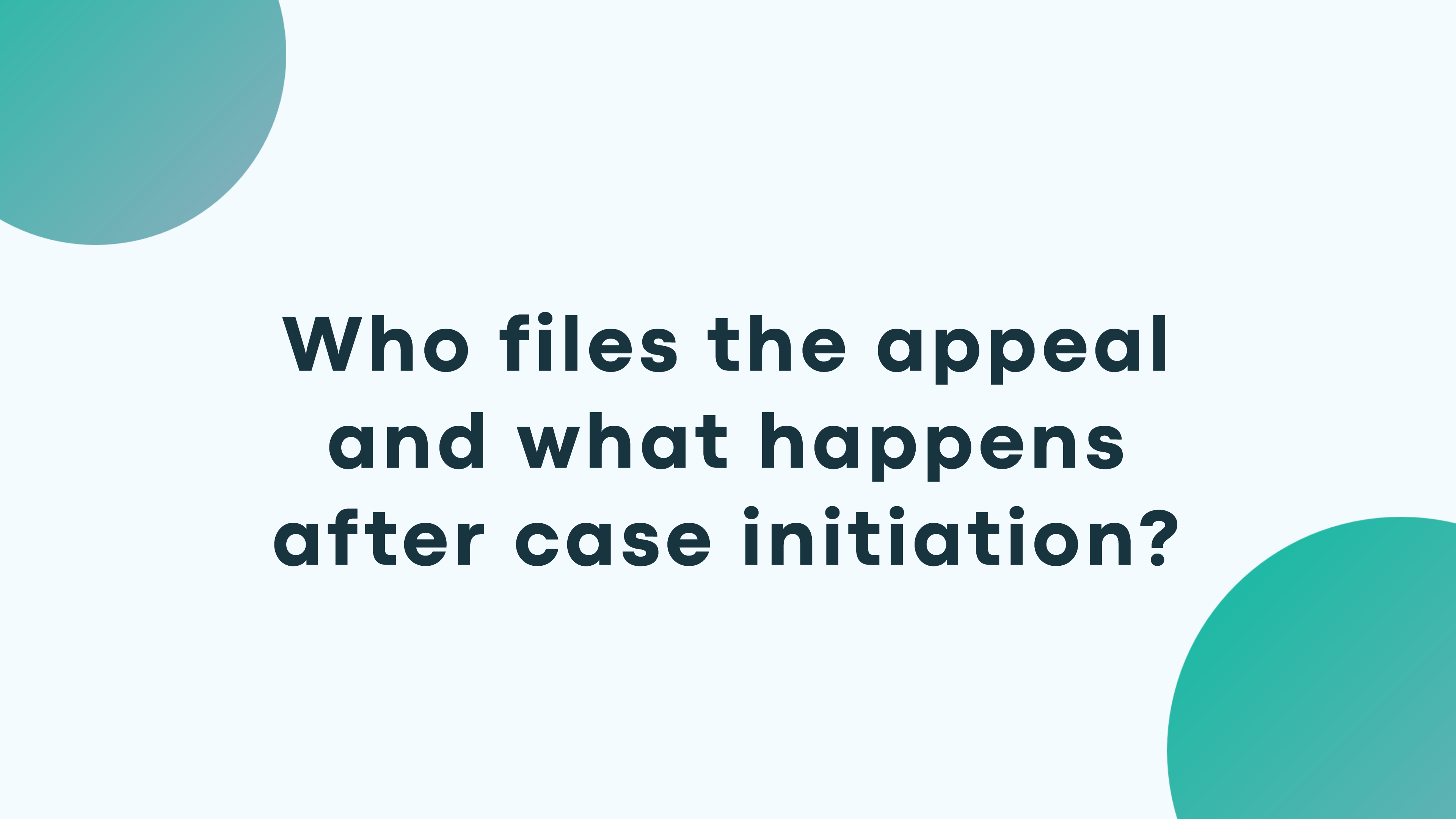


Timing

- **21 days** – for almost any cases that the Probate Register handles – adoption, child welfare, probate.
- **Juvenile cases** – 21 days from some case and 42 days for others (following sentence or conviction in waiver or designation cases)

There is NOT much clarity for Juvenile Delinquency appeals.

- Delinquency treated standard civil case for Appeal by Right.
- Waiver of jurisdiction by juvenile court to criminal division. Appeal may have criminal timelines.
- Designation case – try juvenile as adult in juvenile court – may also have criminal timelines.

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**Who files the appeal
and what happens
after case initiation?**

Who files?

- **In most cases, the attorney for the appellant files the claim.**
 - But in child welfare cases, the county will file – usually in a single SCAO document appointing appellate counsel and claiming an appeal. JC 84.
 - What about juvenile delinquency? JC 84 should also work for Juvenile Delinquency appeals.
- **But warning:** There is inconsistency around state. Some counties require appointed counsel to file the juvenile appeal, other counties handle it.

What's next?



- Appellant's counsel is required to send a copy of the claim and a \$25 check to the trial court. MCR 7.205(E). This is typically how the trial court learns of the appeal.
 - Technically, this should be done at time claim is filed, but it's often done later. There is no penalty in the COA.
 - Sending the check ensures that probate court sends the trial court record to the COA.
 - Important note: For probate, it is important to inform trial court of the claim due to the automatic stay.



Stays pending appeal

Stays pending appeal.

- **Probate** – Once claim of appeal is filed, there is an automatic 21 day stay to give appellant time to seek a stay pending appeal in the trial court and/or COA. MCL 600.867(1).
- **But not all probate** – The probate court may enter a stay for cases from the family division of the circuit court; from an order of the probate court entered under the mental health code, from a guardianship order under EPIC. MCL 600.867(2).
- **Adoption** – stay motion must be filed in the COA, not Trial Court. MCL 710.65(2). Requires a “motion for good cause shown and on such terms as are deemed just.”
- I have *never* seen a stay in **child welfare or juvenile case**. And would be extremely unlikely in guardianship or mental health code case.



What about Applications for Leave to Appeal?

Applications for Leave

- **Timing** – 21 days from order, or 42 in those juvenile cases that are treated as criminal proceedings.
- **Delayed** – 6 months in all cases except termination of parental rights (then only 63 days).
- **What can be appealed by application?**
 - Any order that is not appealable by right.
 - An order that could have been appealed by right, but the deadline was missed.
- **COA can take a variety of actions:**
 - Grant leave (about 15%)
 - Deny leave (about 85%)
 - Reverse and remand.
- **If leave is granted**, then the case is treated as if it were an appeal by right.



Appellate Process after claim until decision

Process of appeal until decision

- **Priority Cases.** MCR 7.213(C). This impacts timing in many cases: Guardianship, mental health code, adoption, child welfare, and also some Juvenile Delinquency (if there is an interlocutory criminal appeal).
- **Special note about adoption appeals.** MCL 710.65(3) “An appeal from an order entered under this chapter shall be given priority in the court of appeals and shall take precedence over all other matters, except for other matters that are given priority by specific statutory provision or rule of the supreme court.”

Process of appeal until decision

- **Transcripts** – Court reporter has 42 or 91 days to prepare transcript.
 - There have been many problems in securing transcripts.
 - Proposed legislation to increase statutory rate.
- **Appellant's Brief** – Brief is due 28 or 56 days after transcript filed in trial court. If it is a priority case, then it is harder to get an extension.
 - In most cases, the attorneys can stip for 28 days or motion for 56 days.
 - In priority cases, extension is only by motion for good cause.

Process of appeal until decision

- **Appellee's Brief** – Due 21 or 35 days after Appellant's Brief. Same caveat about extensions.
- **Reply Brief** – 21 days in all cases. No stips allowed. A motion for 14 days is typically accepted. Extensions on reply briefs do not impact scheduling of oral argument.
- **Decision** – Priority cases. Usually 8–12 months from claim. All other cases, 15–20 months.



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Going to the Supreme Court

Going to the Supreme Court

- **Adoption, Guardianship, Mental Health Code, Probate, and most child welfare cases** - 42 days to file application. MCR 7.305(B)(2).
- But if the appeal is from a **termination of parental rights** case where the COA remanded to the trial court for further proceedings, then only 28 days to go to Supreme Court. This typically would apply to an appeal by DHHS/Prosecutor, but not always. MCR 7.305(B)(5).
- **Juvenile** - 42 or 56 days depending on the type of juvenile case. If "civil" then 42 days, but if "criminal" 56 days. *Ross Minors* case went to Supreme Court oral argument about which deadlines applied to juvenile cases.

Going to the Supreme Court

- The COA opinion does **NOT** go into effect until after the time has passed to file an application in the Supreme Court, and while the case is pending in the Supreme Court! MCR 7.215(E), MCR 7.305(C).
- Important note for finalizing **adoption cases** – Even if COA has affirmed the termination of parental rights, the trial court **MUST** wait until the time has passed to appeal the termination order before finalizing the adoption. PCA 321.

“I have determined that any appeal of the decision to terminate parental rights has reached disposition, that no appeal, application for leave to appeal, or motion for rehearing or reconsideration is pending, and that the time for all appellate proceedings in this matter has expired.”

Have questions? Reach out.



Liisa Speaker

 517-482-8933

 lspeaker@speakerlaw.com

 www.speakerlaw.com



THANK YOU!