



Materials for this presentation can be found at the following site:

<http://courts.michigan.gov/scao/services/CWS/TrainingDevelopment.htm>

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Appeals by Leave: What Child Welfare Attorneys Need to Know Webcast

Appeals by Leave

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Michigan Supreme Court

- No right to have the case heard by the Supreme Court
- Must file an application requesting the Court to review the case. MCR 7.302.
- For TPR cases, the application must be filed within 28 days of
 - the filing of the opinion appealed from; OR
 - the denial of a timely filed motion for reconsideration
- Late filings will not be accepted. MCR 7.302(C)(3)

Immediate effects of filing an application

- The filing of the application automatically stays the Court of Appeals' decision in the case until the Michigan Supreme Court renders a decision on the application. MCR 7.302 (C)(5).
- If a party files an application and the Court denies the request, the Court of Appeals' decision cannot be published. MCR 7.215(D)(4)

What the application must demonstrate – MCR 7.302

- The issue involves a substantial question as to the validity of a legislative act
- The issue has significant public interest and the case is one by or against the state
- The issue involves legal principles of major significance to the state's jurisprudence
- The Court of Appeals' decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals
- Include this as a separate section in your brief

Examples of recent cases accepted/decided on application by the Michigan Supreme Court

- *In re Morris/In re Gordon*
- *In re Krupa*
- *In re Mays*
- *In re Mason/In re Hansen*
- *In re Hudson Morgan/In re Mitchell*
- *In re Watkins*
- *In re Lee*
- *In re Rood*

Practical considerations

- Have you advised your client re: the right to appeal to the Michigan Supreme Court? Does she/he want to?
- Did the trial court commit any legal/procedural errors?
- Was there a dissent at the COA?
- Did the COA publish the decision?
- If you represent a parent, did the L-GAL side with you at the trial court and the COA?
- Is another similar case pending before the Supreme Court?
- What are the current trends/hot issues in Michigan child welfare law?
 - sign up for listservs, read COA opinions

What to file? The Application – MCR 7.302(A)(1)

- 8 copies of an application prepared in conformity with MCR 7.212(B)
 - Statement identifying the judgment or ordered appealed from and relief sought
 - Questions presented for review
 - Table of contents/index of authorities
 - Statement of material proceedings and facts
 - Concise argument in support of position
 - Attach opinion, findings or judgment of the trial court
 - Attach COA opinion

What else to file?

- Notice of hearing that states that the application will be submitted to the Court on a date which is on a Tuesday at least 21 days after the filing of an application. MCR 7.302(A)(2).
- Proof that a copy of the application was served on all other parties, and that a notice of the filing was served on the clerks of the Court of Appeals and the trial court. MCR 7.302(A)(3).
- The fee - \$375, but you can file a motion to waive fees if you are representing an indigent party. Need an affidavit. MCR 7.319.

Then what happens

- The other parties can (and should) file briefs in opposition to your application. MCR 7.302(D). Eight copies must be filed. It is very important to file a brief in opposition. The Court may issue a peremptory reversal order.
- The other parties can file a cross-application for leave to appeal within 28 days of the filing of the application.
- Can request that the cross-application be conditional. That is, if the Court grants the application, then the court should consider these additional issues. This ensures that you will be able to present your issues as well.

The Court's options – MCR 7.302

- After an application is filed, the Court has the following options:
 - Can grant or deny the application
 - Enter a final decision
 - Issue a peremptory order.
- The Court may also grant oral argument upon application and request supplemental briefing. Oral arguments upon application are 15 minutes for each side.
- If the Court grants the application, then it will request full briefing. Oral arguments on calendared cases are 30 minutes for each side.

Other considerations

- Can request amicus briefs in support of the application. Briefs have been filed by:
 - Children's Law Section of the State Bar/Family Law Section
 - State Bar Planning Body
 - Legal Services Association of Michigan
 - ACLU
 - National Association of Counsel for Children
 - Center for Individual Rights
 - Michigan Protection and Advocacy
 - Prosecuting Attorneys Association of Michigan

Other considerations cont.

- This is a specialized practice so seek out assistance when you need it. Even if you cannot handle an application, pro bono assistance may be available. Or ask the trial court for extraordinary fees if you file an application.
- Helpful resources.
 - Feel free to contact me with any questions
 - Evelyn Calogero, Cooley Law School, calogere@cooley.edu
 - Michigan Supreme Court website:
<http://courts.michigan.gov/supremecourt/#>
 - Michigan Supreme Court Clerk's Office -- 517-373-0120.

Michigan Court of Appeal

- Appeal as of right – MCR 3.993 – order of disposition placing a minor under the court's supervision, an order removing a child from the home, an order terminating parental rights, any other final order
- Can also file application for leave to appeal. MCR 7.205
 - Denial of parenting time
 - Discovery dispute
 - Denial of right to counsel
 - Finding that no reasonable efforts to reunify are required
 - Miss filing deadline in TPR case (must be filed within 63 days) – MCR 3.993(C)(2)

Michigan Court of Appeals – Applications for Leave to Appeal

- 21 days after entry of the judgment or timely motion for reconsideration. MCR 7.205
- 5 copies of an application for leave to appeal
 - date and nature of the judgment
 - Allegations of error and relief sought
 - Concise argument conforming to MCR 7.212(C)
 - Harm suffered by awaiting final judgment before taking appeal
- 5 copies of judgment or order appealed from, register of actions, opinion/findings of trial court
- Certain transcripts, or certificate of court reporter
- Proof of service
- Entry fee
- Opposing counsel can file answer within 21 days of service (5 copies)

What can the Michigan Court of Appeals do?

- MCR 7.205(D)(2) – grant or deny the application, enter a final decision, grant other relief, request additional material from the record, require a certified concise statement of proceedings and facts from the court whose order is being appealed.
- If application is granted, the case proceeds as of an appeal of right.
- Appeal is limited to issues raised in the application.

Impediments

- Will the court pay attorney's fees for appeal by leave?
 - MCR 3.915 – right to court-appointed counsel at any hearing conducted pursuant to the rules.
- Will the court pay for transcripts for appeal by leave?
- Will the case be mooted out by the time the appeal is heard?
 - Emergency appeal – MCR 7.205(E)
 - Motion for immediate consideration/motion for peremptory reversal – MCR 7.211(C)(4)(6)
 - Agree to stipulated facts

Questions?

If you need appellate assistance, feel free to contact me at vss@umich.edu or at 734-763-5000.
