

Appeals from Probate Court

Overview of what appeal goes where

Appeals to **Circuit Court by Right:**

- Final orders affecting the rights and interests of an adult or a minor in a guardianship proceeding, and
- Final orders affecting the rights or interests of a person under the Mental Health Code, except for final orders affecting the rights or interests of a person in the estate of an individual with developmental disabilities.

MCL 600.863; MCR 5.801(C)

Appeals to **Circuit Court by Leave:**

- Orders regarding discovery, rulings on evidence, orders appointing a guardian ad litem, and orders suspending a fiduciary for failing to give a bond, file an inventory, or render an accounting.
- Untimely appealed final orders affecting the rights and interests of a person under the Mental Health Code.
- Untimely appealed final orders affecting the rights and interests of an adult or a minor in a guardianship proceeding.

MCL 600.863; MCR 5.801(D), (F), 7.203(B)

Appeals to **Court of Appeals by Leave:**

- Judgments entered by the circuit court on appeals from the probate court.
- Certification of issues by the probate court judge.

MCL 600.863; MCR 5.801(D), (F), 7.203(A).

Probate Court's Jurisdiction Pending Appeal:

Appeals to Circuit Court: Once a claim of appeal is filed or leave to appeal is granted, the probate court retains only limited jurisdiction over the case.

Appeals to Court of Appeals: After a claim of appeal is filed or leave to appeal is granted, the probate court may not set aside or amend the order appealed from except by order of the court of appeals or by stipulation of the parties.

Other Appeals to **Court of Appeals by Right:**

- Final order affecting the rights or interests of a party to a civil action commenced in the probate court under MCR 5.101(C). MCR 5.801(B)(1).
- Final order affecting the rights or interests of any interested person in a proceeding involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos trust or a trust created under a will.

These rights are limited to orders resolving the following matters:

- Appointing to removing a personal representative, conservator, trustee, or trust protector as referred to in MCL 700.7103(n) or denying such an appointment or removal;
- Admitting or denying to probate of a will, codicil, or other testamentary instrument;
- Determining the validity of a governing instrument;
- Interpreting or construing a governing instrument;
- Approving or denying a settlement relating to a governing instrument;
- Reforming, terminating, or modifying or denying the reformation, termination or modification of a trust;
- Granting or denying a petition to consolidate or divide trusts;
- Discharging or denying the discharge of a surety on a bond from further liability;
- Allowing, disallowing, or denying a claim;
- Assigning, selling, leasing, or encumbering any of the assets of an estate or trust;
- Authorizing or denying the continuation of a business;
- Determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, or a family allowance;
- Authorizing or denying rights of election;
- Determining heirs, devisees, or beneficiaries;
- Determining title to or rights or interests in property;
- Authorizing or denying partition of property;
- Authorizing or denying specific performance;
- Ascertaining survivorship of parties;
- Granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;
- Granting or denying a petition to determine *cy pres*;
- Directing or denying the making or repayment of distributions;
- Determining or denying a constructive trust;
- Determining or denying an oral contract relating to a will;
- Allowing or disallowing an account, fees, or administration expenses;
- Surcharging or refusing to surcharge a fiduciary or trust protector as referred to in MCL 700.7103(n);
- Determining or directing payment or apportionment of taxes;
- Distributing proceeding recovered for wrongful death under MCL 600.2922
- Assigning residue;
- Granting or denying a petition for instructions;
- Authorizing disclaimers; and
- Allowing or disallowing a trustee to change the principal place of a trust's administration.

MCR 5.801(B)(2)

- An order entered before January 1, 1998, in an adoption proceeding appealed in accordance with MCL 710.65.
- The following final orders entered before January 1, 1998, by the juvenile division of the probate court:
 - An order of disposition placing a child under the supervision of the court or removing the child from his or her home
 - An order terminating parental rights
- A final order in a condemnation case entered before January 1, 1998, under the drain code of 1956.

MCL 600.861.

Other appeals by right to the court of appeals may be defined by statute. MCR 5.801(B)(3).

Probate Court Appellate Procedure: Appeals to Circuit Court

Note re: Right to Counsel for Appeal: Although there is no statute or court rule that requires the appointment of counsel for appeal, the probate court could use its discretion to appoint counsel if necessary to ensure the right to appeal.

Appeal by Right:

Trial court decision entered

Within time allowed by statute or within 21 days after entry of order unless further time allowed by court

Claim of appeal filed by appellant

Within 56 days

Transcript must be filed after the claim of appeal is filed.

Within 14 days

After the complete transcript has been filed or a certified copy of the record has been requested, the probate court must promptly send the record to the circuit court. If the record is ready for transmittal, the probate court signs an order transmitting the record.

Within 14 days after the complete transcript has been filed or a certified copy of the record has been requested.

The appellee may take a cross appeal by filing a claim of cross appeal.

After the appeal is decided/dismissed and unless a timely application for leave to appeal is filed in the COA

The circuit court clerk must promptly send the probate register a copy of the judgment, order, or opinion entered in the circuit court and all documents previously received by the probate court.

Appeals by Leave:

Within 21 days

The signed application for leave to appeal must:

- State the date and nature of the order appealed,
- Recite the allegations of error and the relief sought,
- Set forth a concise argument in support of the appellant's position on each issue, and
- If the order appealed is interlocutory, show the appellant would be harmed by awaiting final judgment before appealing.

A notice of the filing of the application must be filed with the probate court and a copy of the application served on all parties.

Immediately after an order granting leave to appeal is entered

Circuit court must promptly serve a copy of the order on the probate court and the parties.

Within 7 days after entry of order granting leave to appeal

Appellant to file required initial documents and order the transcript.

Documents to be filed with probate court by appellant:

- Copy of claim of appeal (MC 55)
- A \$25 fee to the probate register
- A bond for costs on appeal unless the appellant has filed a stay bond that includes security for costs, the appellant is exempt or excused from filing a bond, or bond is waived (the bond must be for \$200 unless the probate court sets another amount, and must be on the condition that the appellant will pay the costs and damages awarded on appeal).
- Proof that a copy of the claim of appeal and other documents required to be filed in circuit court were served on appellee and all other interested persons along with the following:
 - A copy of the order appealed from
 - A true copy of the bond, if appellant filed a bond
 - Proof that money, property, or documents were delivered or other acts required by law were performed and the nature of the acts
 - Proof that the appeal fee of the probate court was tendered
 - A copy of the register of actions, if applicable
 - A copy of the reporter's or recorder's certificate showing
 - That the transcript has been ordered and payment secured or
 - That there is no record to be transcribed

Appellants must order a copy of the full transcript and secure payment for it.

Probate Court Appellate Procedure: Appeals to COA

Appeals by Right:

Trial court decision entered

Within time allowed by statute or within 21 days after entry of order unless further time allowed by court

Claim of appeal filed by appellant

Within 14 days after being served with the claim of appeal

A party possessing any exhibits offered in evidence, whether admitted or not, must file them with the probate court unless, by stipulation of the parties or order of the probate court, they are not to be sent, or copies, summaries, or excerpts are to be sent. Copies of exhibits may be filed in lieu of originals unless the probate court orders otherwise.

Within 21 days after claim of appeal is filed

Appellee must file an appearance in the COA and in the probate court. If does not file, appellee not entitled to notice of further proceedings until an appearance is filed.

Documents to be filed with probate court by appellant:

- Copy of claim of appeal (MC 55)
- A \$25 required fee
- Any bond required by law as a condition for taking the appeal (MC 56)
- Unless there is no record to be transcribed, the certificate of the court reporter or recorder stating that a transcript has been ordered and payment for it made or secured, and that it has been filed or will be filed as soon as possible.

Appellant must serve on all interested persons a copy of the claim of appeal and a copy of any bond.

Appellant is responsible for securing the transcript unless otherwise provided by the COA.

Within 21 days after the briefs are filed or the time for filing the appellee's brief expired

Probate court must send the COA the record on appeal, except for those things omitted by written stipulation of the parties, along with a certificate identifying the name of the cases and the papers included. The following documents must be included as part of the record:

- A register of actions in the case
- All opinions, findings, and orders of the probate court
- The order or judgment appealed from

Weapons, drugs, or money are not to be sent unless COA requests them. Transcripts and all other documents must be attached in one or more file folders or other suitable hard-surfaced binders showing the name of the probate court, the title of the case, and the file number.

Appellant must serve copy of record on appeal on each appellee and file proof of service with the probate court and COA.

Within 21 days after transcript filed with the probate register

When the record is returned to the probate court, the exhibits must be returned to the parties who filed them. If a motion is pending in the COA before the time the complete record on appeal is transferred, the probate register must, on request of a party of the COA, send the COA the documents needed.

Case disposed in COA

Probate court receives certified copy of opinion/order. Following expiration time for application for leave to appeal (within 42 days to S.C.), the probate court must receive original record from COA. The probate court must notify the parties so that they may take appropriate action in the probate court. Execution of the judgment is obtained or enforced through proceedings in the probate court after the record has been returned with a copy of the court's judgment.

Appeals by Leave:

Within 21 days

Application for leave to appeal must be filed.

COA grants leave; case proceeds as an appeal of right except that claim of appeal is not required and the time limits for the filing of a cross appeal and for the taking of the other steps in the appeal, including the filing of the docketing statement (28 days) and the filing of the court reporter's or recorder's certificate, if the transcript has not been filed (14 days), run from the date the order granting leave is certified.

If COA requires certified concise statement of proceedings and facts, Appellant must serve on all other parties a copy of a proposed concise statement of proceedings and facts, describe course of proceedings and facts pertinent to issues raised in the application, and notice of hearing in probate court with date, time, and place for settlement of the concise statement.

Hearing must be held within 14 days after proposed concise statement and notice is served on the other parties.

Within 7 days after settlement hearing

Probate court must certify the concise statement and immediately send to COA clerk and serve a copy on each party.