

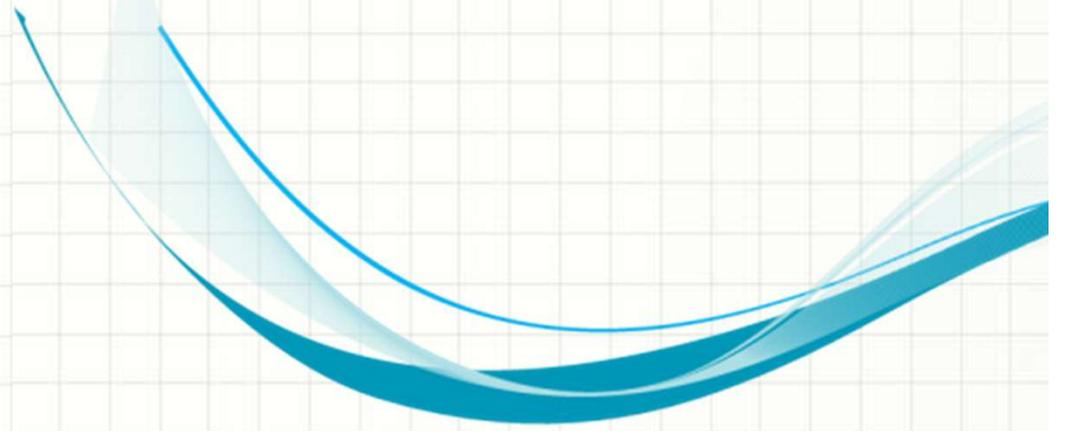
**THE WEST VIRGINIA COURT
IMPROVEMENT PROGRAM
GUARDIAN AD LITEM TRAINING
APPEALS**

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Attorney at Law
January 31, 2019

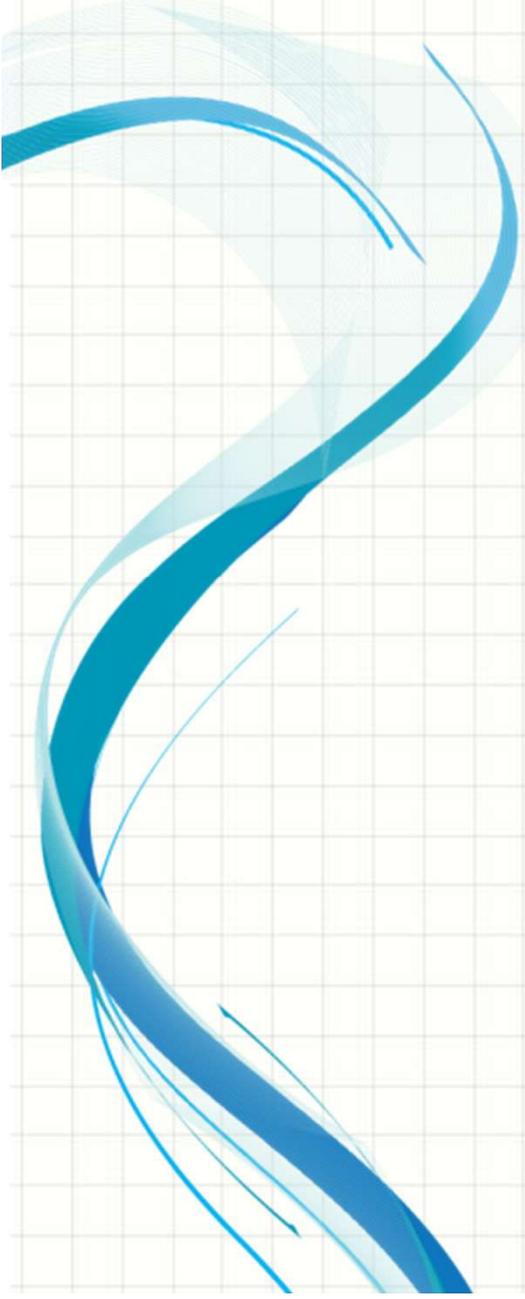


Guardian ad litem in Child Abuse and Neglect Cases

Appeals and Writs
to the Supreme Court of Appeals
of West Virginia

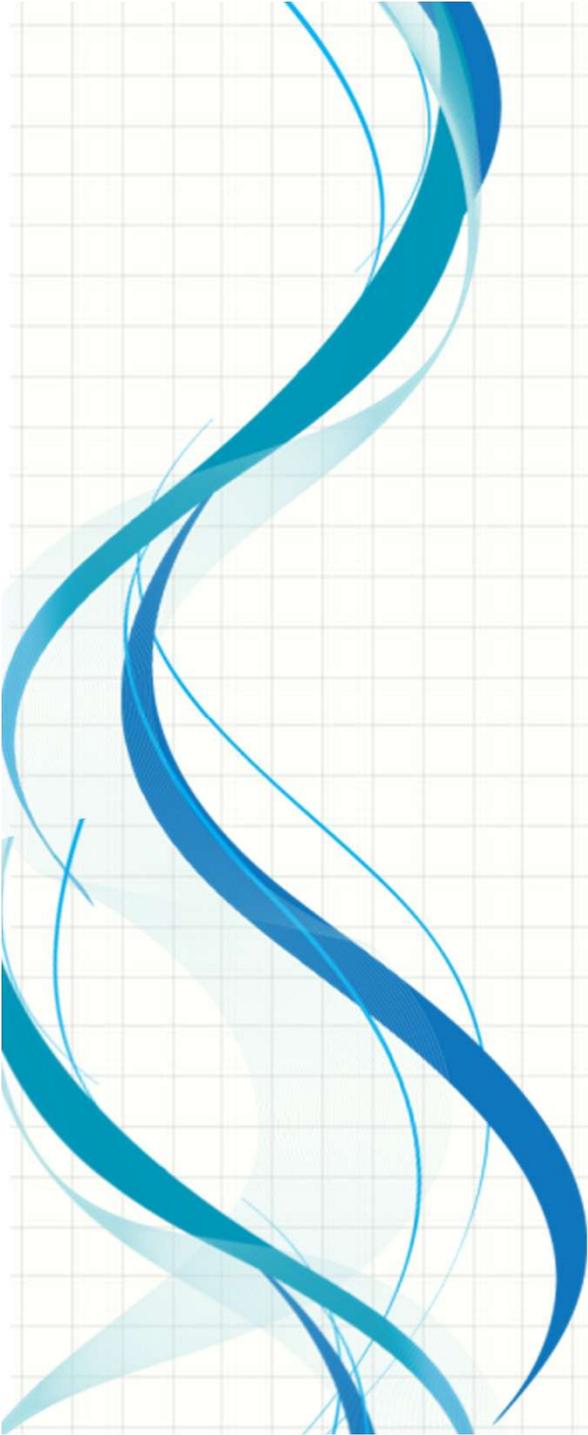


Appeals



In re A.N., Nos. 15-0182 and 15-0208 (W.Va. Supreme Court, September 30, 2015)

-contempt ruling for GAL who did not comply with scheduling order and file brief. No matter who files the appeal, the GAL is required to file a responsive brief.



And appear for any oral
argument on the case



An interlocutory appeal may arise from an
adjudicatory hearing

W.Va. Code § 49-4-601(k)



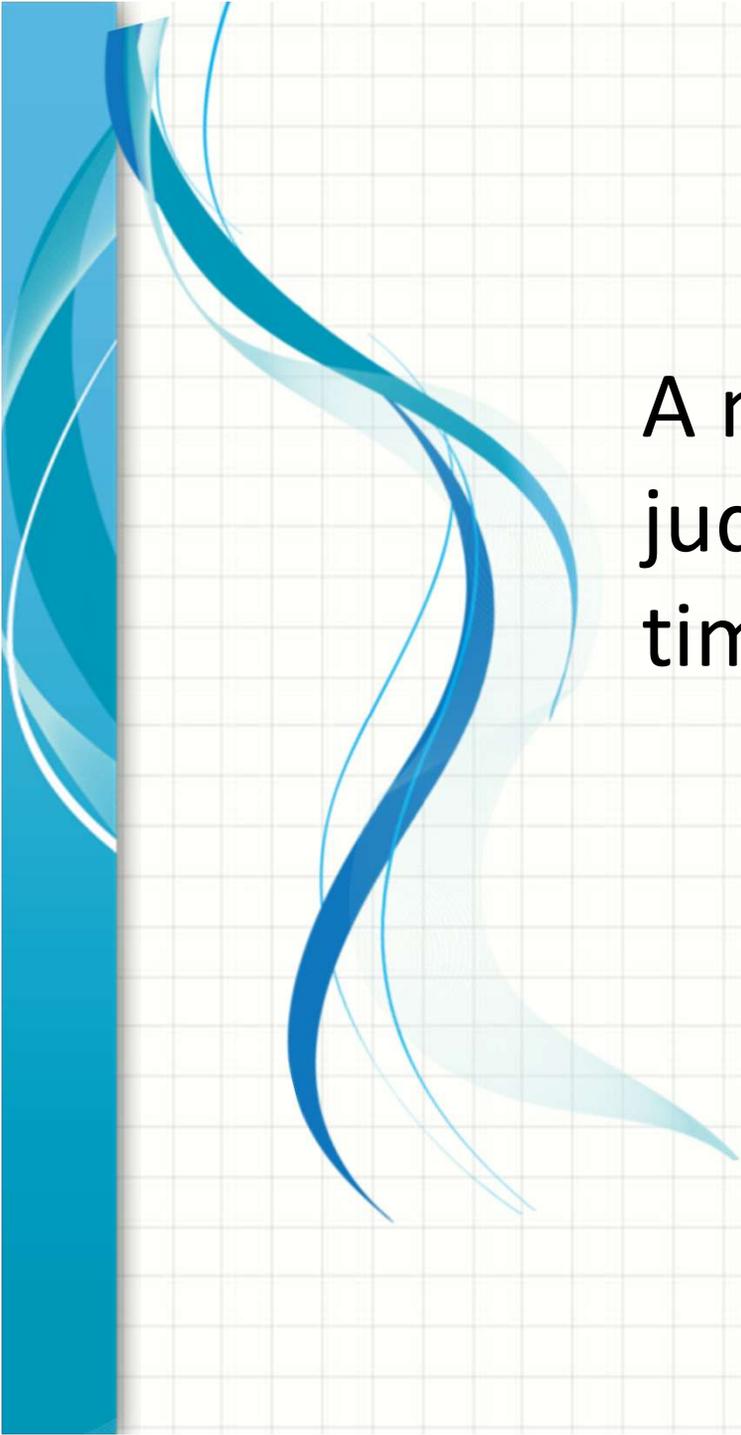
Most appeals come after the final disposition hearing. The GAL may choose to appeal all or part of the final disposition of the case.

Using proposed findings of fact and conclusions of law-Rule 30 W.Va.RPCANP to define case at disposition hearing.

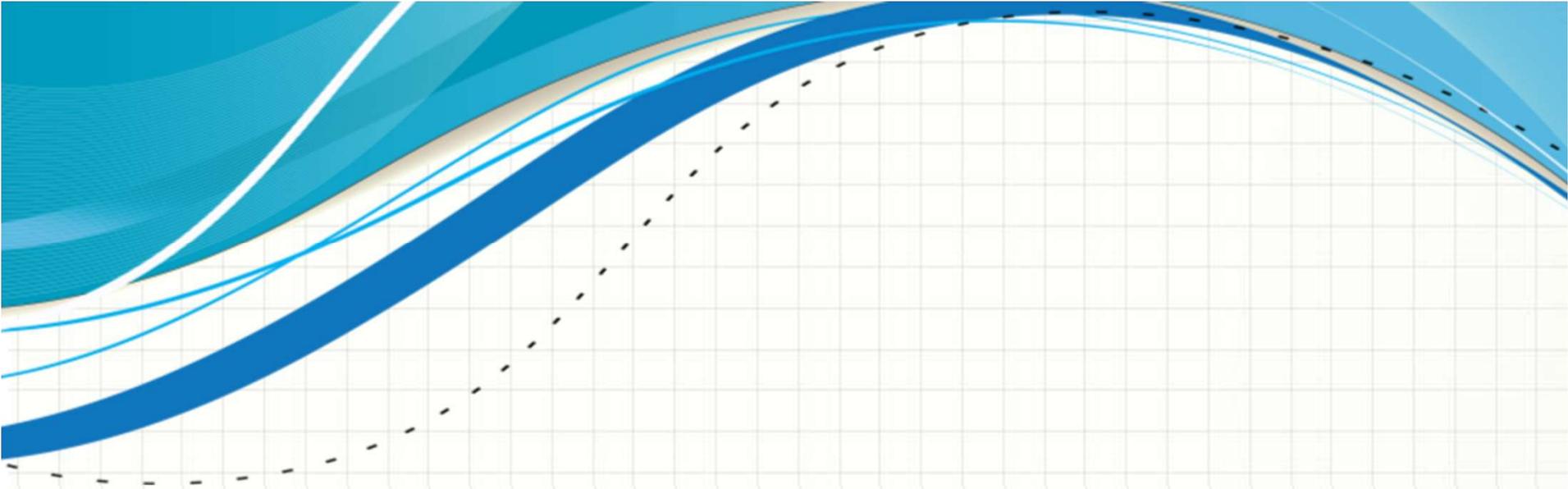


A party appealing a judgement
must file notice of appeal within 30
days of the judgement

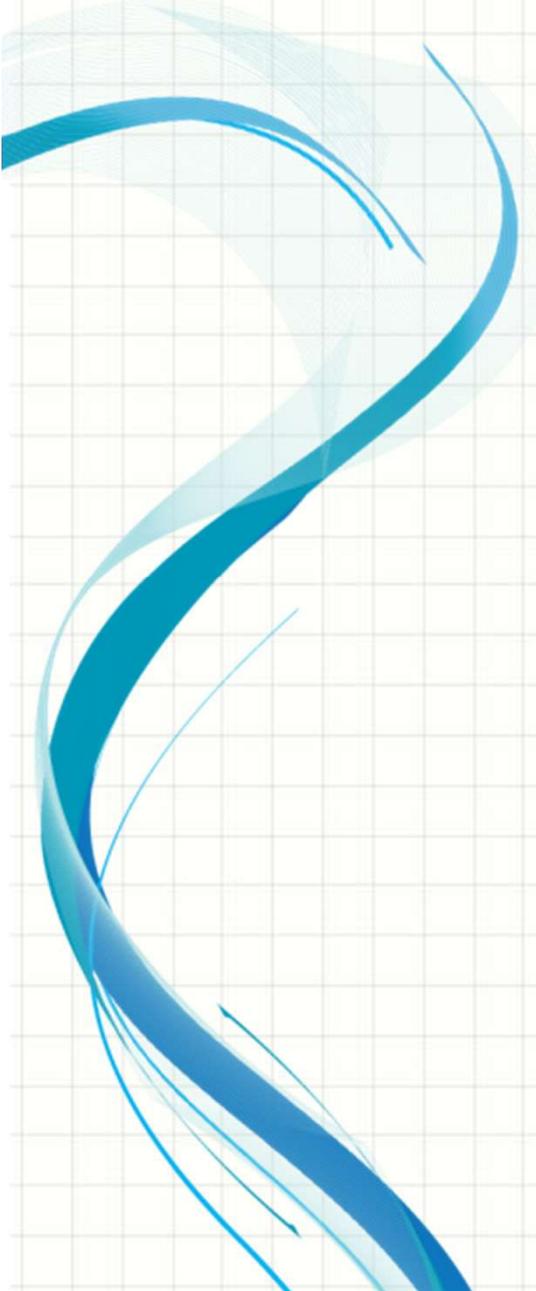
W.Va. R.A.P. 11



A motion to modify the judgement does not toll the time for initiating an appeal.

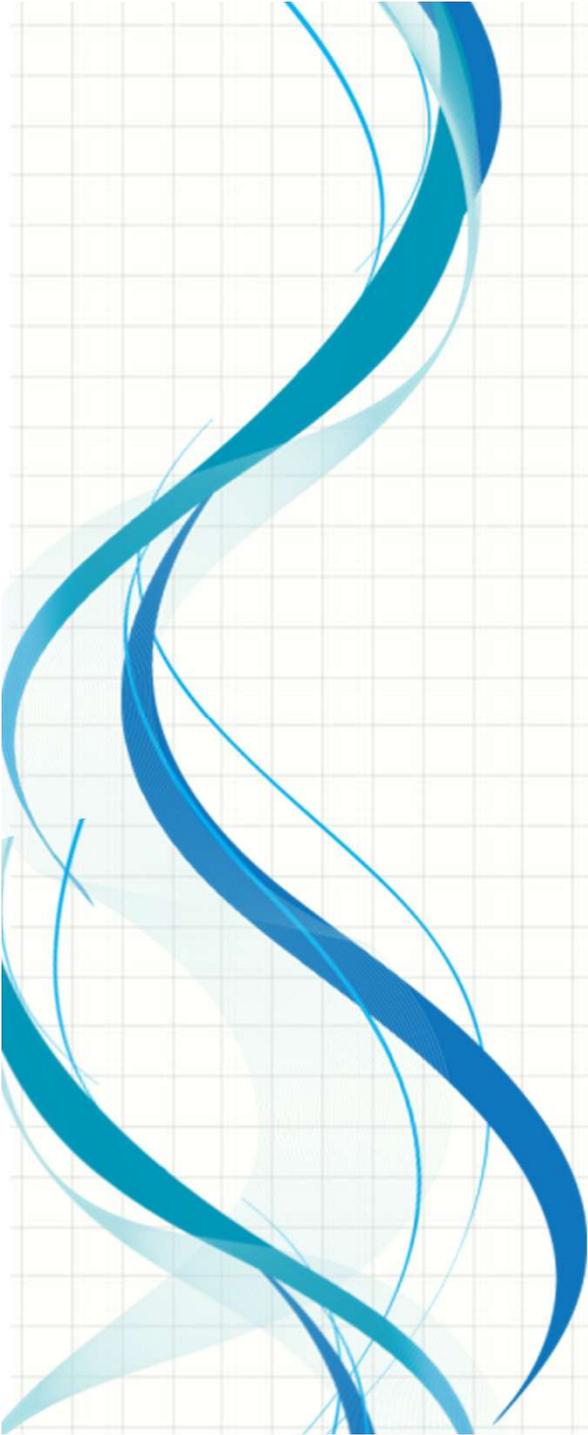


TRANSCRIPTS

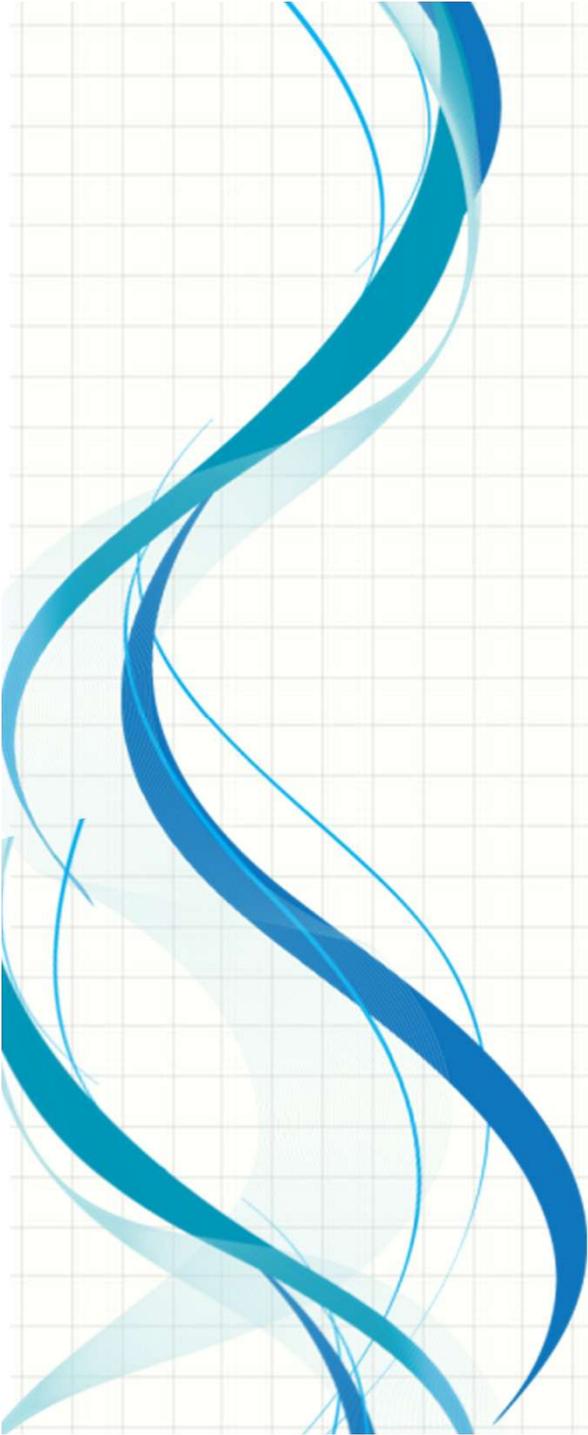


Transcripts need to be submitted when there are disputed evidentiary or testimonial issues.

Old Rule 11(1), which limited transcripts, is gone.



Go over proposed
Appendix early (when
parties are working to
stipulate) If find need for
transcript later file a
motion to supplement
appendix to get needed
record. R.A.P. 7 appendix



Indigent persons are
entitled to transcripts
without cost W.Va. Code
§49-4-601(k)



An appeal in an abuse and neglect case must have certain information attached to the Notice of Appeal.

This includes:

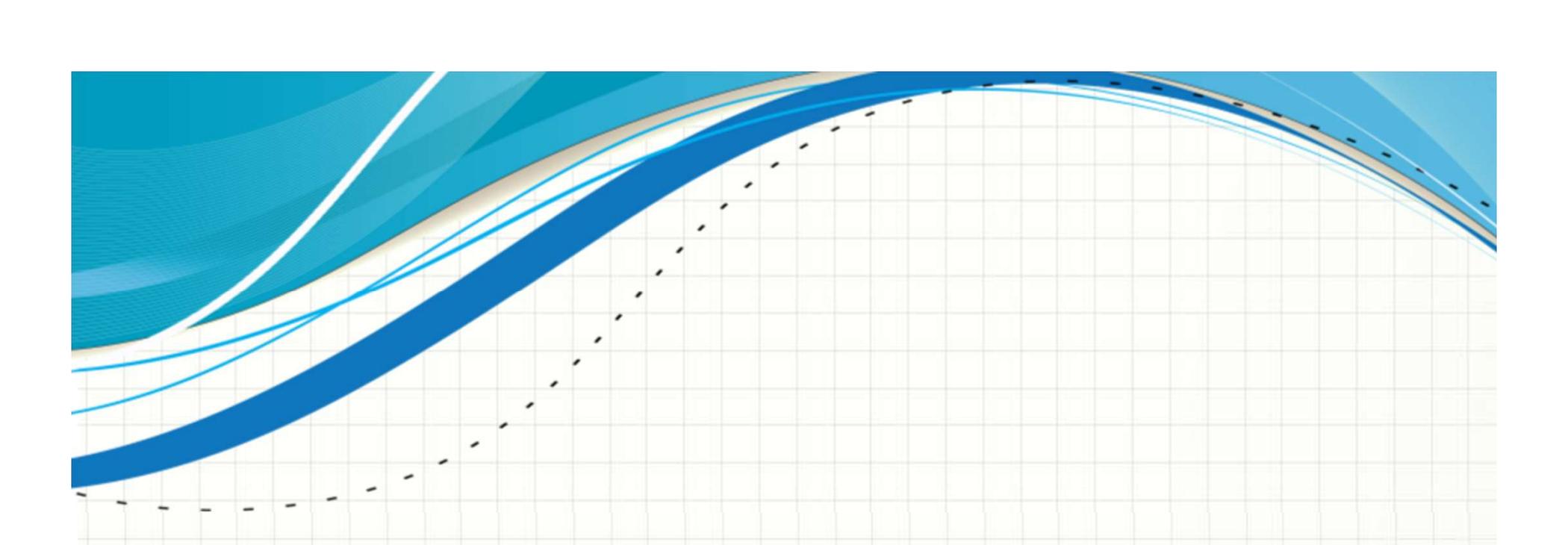
1. Names and ages of children involved (using the initial format used by the court instead of the full name)
2. Parents names for all of the children
3. A brief description of the current status of parental rights of each parent at the time of the filing
4. A brief description of the proposed permanent placement of each child, and
5. The name of the GAL in the case



Most of this information is later updated by the GAL in his/her brief and must be ready for presentation before oral argument see W.Va. R.A.P. 11(i) and (j)



Petitioner's brief and appendices must be filed with the Supreme Court within 60 days of judgment.



STAYS

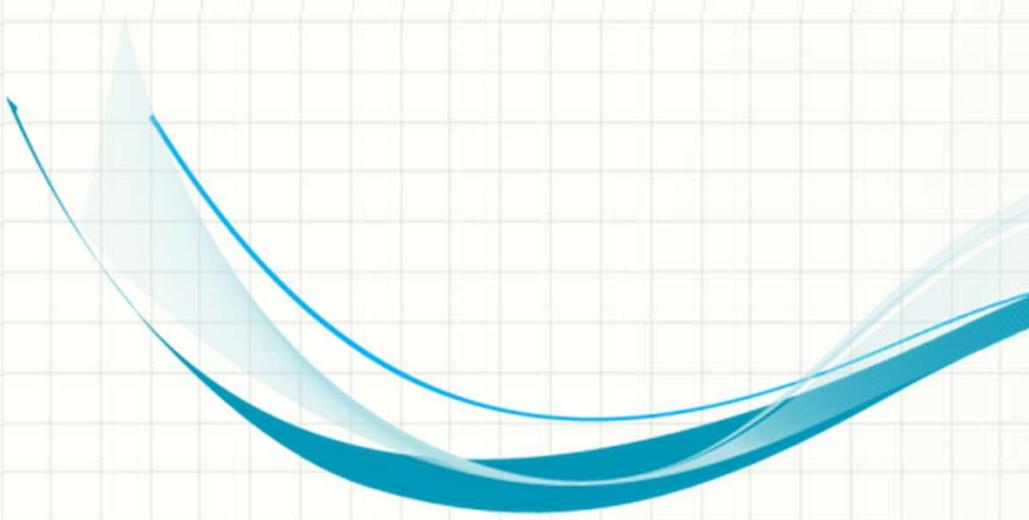


The filing of an appeal does not automatically stay the proceedings in abuse and neglect cases.

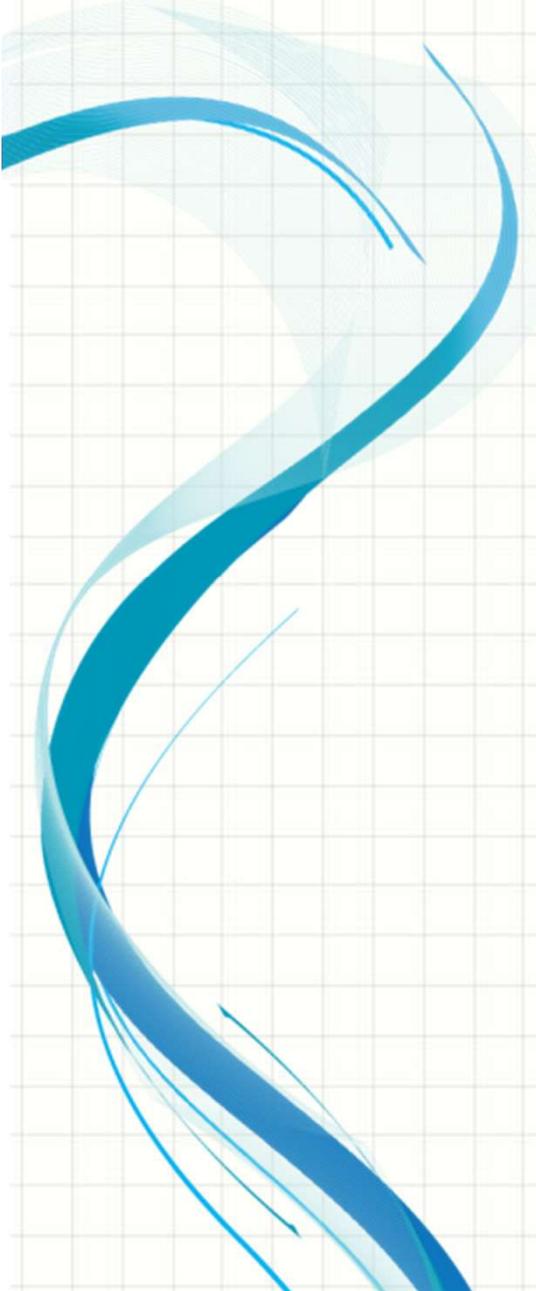


A party must file a Motion to Stay in the Circuit Court.
W.Va. RPCANP Rule 50.

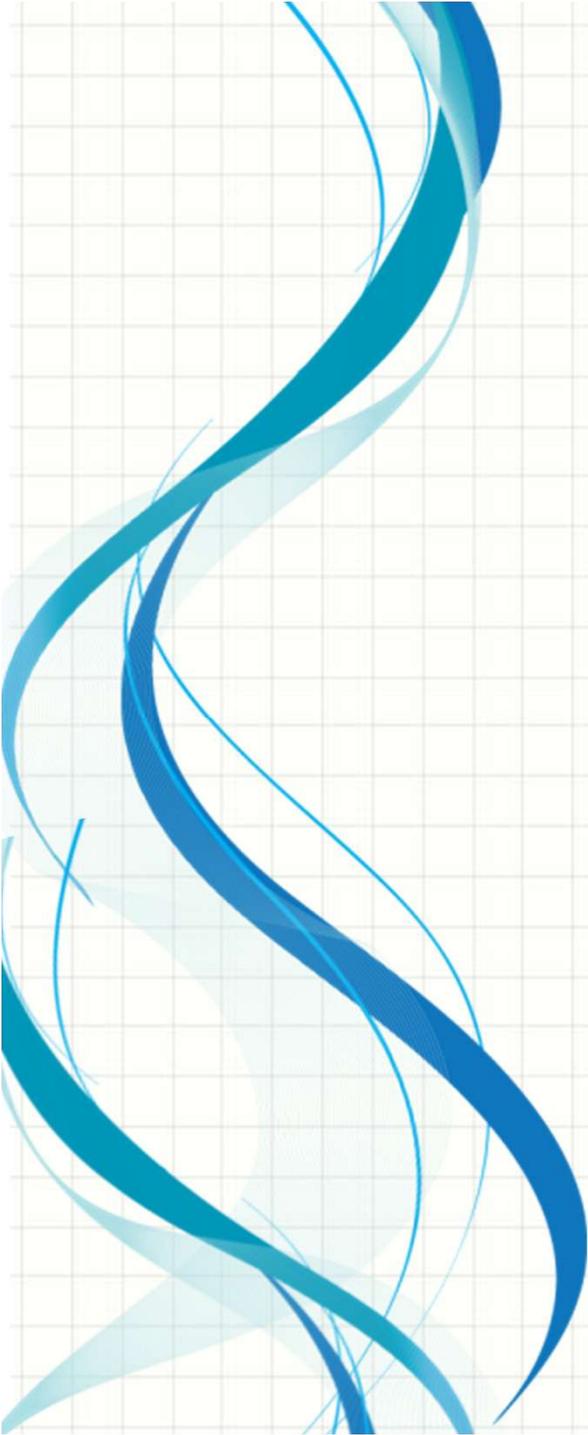
See W.Va. R.A.P. Rule 28 on filing a Stay Motion with
the Supreme Court.



Petitions for Extraordinary Writs

A decorative graphic on the left side of the slide, consisting of several overlapping, wavy blue lines that curve upwards and then downwards, resembling a stylized 'S' or a ribbon. The lines vary in opacity, with some being solid blue and others being semi-transparent, creating a sense of depth and movement.

Writ of mandamus
Writ of prohibition

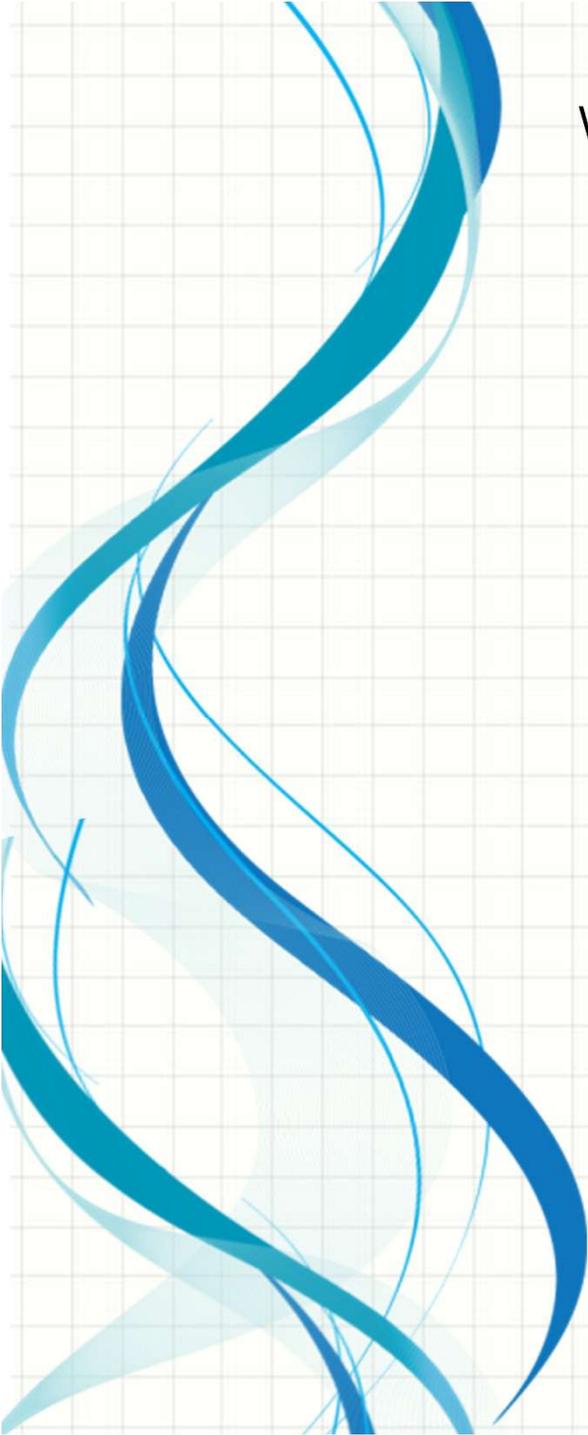


Writ of mandamus has three elements:

- 1) A clear legal right of the petitioner to the relief sought.
- 2) A legal duty of the respondent to do the thing sought to be compelled, and
- 3) Absence of another adequate remedy
State ex rel. DHHR ex rel. Chastity D. v. Hill,
532 S.E.2d (W.Va. 2000)



Mandamus has been used to require DHHR to pay for therapy at the Medicaid rate and suggested as a recourse for former foster parents.



Writ of prohibition analysis includes:

- 1) Whether party seeking writ has not other adequate means, such as direct appeal, to obtain desired relief;
- 2) Whether petitioner will be damaged or prejudiced in a way that is not correctable on appeal;
- 3) Whether lower tribunal's order is clearly erroneous as a matter of law;
- 4) Whether lower tribunal's order of oft repeated error or manifests persistent disregard for either procedural or substantive law, and;
- 5) Whether lower tribunal's order raises new and important problems or issues of law of first impression



Prohibition has been used to challenge improvement periods greater than allowed by statute, orders to reunify children with parent(s).



W.Va. R.A.P. Rule 16 governs extraordinary writs and there are no special provisions for abuse and neglect cases.