

Appellate Procedures for Guardians *ad litem*

In Family Court Cases



Highlights of the Appellate Process and the Court's Expectations of Guardians *ad litem* on Appeal

- Docketing the Appeal
 - Filing of the Notice of Appeal
- Perfecting the Appeal
 - Petitioner's Brief and Appendix
- Filing of the Respondent's Brief or Summary Response
- Reply Brief
- Practical Points with Regard to Preparing Motions
- Tips on Presenting Oral Argument
- Opinions and Memorandum Decisions
- Petitions for Rehearing and Issuance of the Mandate

Revised Rules of Appellate Procedure

- Effective December 1, 2010
- Major Changes in the Revised Rules
 - Docketing the Appeal
 - Perfecting the Appeal and Preparation of the Appendix Record
- Revised Rules of Appellate Procedure are available on the Court's website:
- <http://www.courtswv.gov/legal-community/court-rules/appellate-procedure/contents.html>



Time Frame for Family Court Appeals

- Notice of Appeal must be filed within 30 days of entry of final circuit court order
 - Scheduling order will be prepared
- Appeal perfected within 4 months
- Response within 45 days of appeal being perfected
- Any reply brief deemed necessary must be filed within 20 days of the response



Reminder Regarding Filing Deadlines

- All filings must be received in the Supreme Court Clerk's Office on the date they are due.
- It is not sufficient to mail filings on the date they are due.



Step One: Notice of Appeal

Docketing the Appeal

- Notice of Appeal
 - Completed Transcript Request Form if necessary
- FILE the Original and 5 copies with the Supreme Court Clerk
- SERVE 1 copy on each party, each court reporter, and the circuit clerk



Confidentiality

- The petitioner is responsible for identifying whether a case is confidential in whole or in part.
- Case records already determined to be confidential by the circuit court or family court are considered confidential on appeal. *See* Rule 40(c), Rev. R.A.P.
- If a case record or a portion of a case record was not confidential in the circuit court or family court, then a motion to seal is required. *See* Rule 40(d), Rev. R.A.P.
- Initials or a descriptive term must be used in cases involving juveniles. *See* Rule 40(e), Rev. R.A.P.



Related Cases

- If there are related cases pending in lower tribunals or the Supreme Court, provide the case name, status, and a description of how the cases are related. If you are not aware of any related cases, then answer this section "no."
- If there are related cases, consider whether consolidating the cases for purposes of briefing, consideration, and/or decision is appropriate.



Transcripts

- If a transcript is necessary, then the appellate transcript request form must be completed in full.
- However, transcripts of family court proceedings are not produced at the direction of the Court nor paid for by the State. Occasionally, parties to family court proceedings will pay for transcriptions of DVDs or for private court reporters on their own.



Notice of Appeal Form

- The NOA form can be downloaded from the West Virginia Supreme Court's website

<http://www.courtswv.gov/legal-community/court-rules/appellate-procedure/pdfs/Notice-of-Appeal.pdf>



Duty of Respondent GAL upon Receipt of Notice of Appeal

- Notify the Court if there are any inaccuracies in the notice of appeal
 - Ex: If the petitioner has failed to provide contact information for the GAL in the notice of appeal, the GAL must notify the Court. The Court relies on the information provided to it.
- Update the Court on the current status of the child, particularly if this information was not provided by the other parties



Step Two: Scheduling Order

Scheduling Order

- Upon proper filing of the Notice of Appeal, a Scheduling Order will be entered. It will be sent to those individuals listed as parties in the notice of appeal.
- Compliance with deadlines in the Scheduling Order is mandatory.
- Note: If the GAL is not the petitioner in the appeal, then she/he is considered a respondent. Therefore, the GAL will be required to adhere to the deadlines in the Scheduling Order listed for the respondent or respondents.

Step Three: Perfecting the Appeal

Perfecting the Appeal

- An appeal is perfected with the filing of the petitioner's brief and appendix
- **Petitioner's Brief** (40 page limit)
 - FILE the original and 10 copies with the Supreme Court Clerk
 - SERVE 1 copy on each party to the appeal
- **Appendix** (no page limit)
 - FILE the original and 1 copy with the Supreme Court Clerk
 - SERVE 1 copy on each party to the appeal



Petitioner's Brief

- A petitioner's brief must contain the following:
 - Cover Page
 - Should include the caption of the case, the title of the document ("Petitioner's Brief"), and the contact information of the attorney or pro se litigant
 - Note: The official caption of the case is set forth on the scheduling order.
 - Table of Contents (if brief exceeds five pages)
 - Page references to the sections of the brief and the argument headings
 - Table of Authorities (if the brief exceeds five pages)
 - Alphabetical list of cases, statutes, and other authorities cited

Petitioner's Brief (Cont'd)

- Assignments of Error
 - Brief must open with the assignments of error presented for review
 - They do not have to correspond precisely to the assignments of error set forth in the notice of appeal
- Statement of the Case
 - Procedural history
 - Statement of the facts relevant to the assignments of error
- Summary of Argument
- Statement Regarding Oral Argument *and Decision*

Petitioner's Brief (Continued)

- Argument Section
 - Points of fact and law presented
 - Citations to the authorities relied upon, under headings addressing each assignment of error
- Conclusion
 - Relief sought
- Certificate of Service

Appendix Record: The Record on Appeal

- Includes documents filed in the lower court that are pertinent to the assignments of error
- Parties are encouraged to confer and agree on the contents of the record on appeal
- The Appendix consists of pertinent orders, pleadings, transcripts/DVDs, GAL reports, and/or other documents
- The Appendix must contain a cover page, certification page, table of contents, and certificate of service
- Appendix must be paginated



A Supplemental Appendix

- If relevant documents are not filed by the petitioner, a motion to supplement the appendix should be filed by the guardian *ad litem* accompanied by a supplemental appendix that complies with Rule 7
 - For example, if the GAL wants to refer in her/his brief to a GAL report filed in the circuit court but it is not included in the appendix record filed by the petitioner, the GAL may move to supplement the record with the GAL report.

Step Four: The Response

The Response Brief

- A respondent has a choice of whether to file a full respondent's brief or a summary response.
- Whether a full respondent's brief or a summary response is appropriate depends on the circumstances of case.
- Any respondent who files a summary response may waive appearance at a subsequent oral argument.

Respondent's Brief

- **Respondent's Brief** (40 page limit)
- FILE the original and 10 copies with the Supreme Court Clerk
- SERVE 1 copy on each party to the appeal



Contents of the Respondent's Brief

- The respondent's brief generally follows the same format and other requirements as a petitioner's brief with the following exceptions:
 - The statement of the case is only necessary to correct inaccuracies or omissions in the petitioner's brief and
 - No restated assignment of error section is necessary
- The respondent's brief must specifically respond to each assignment of error or the Court will assume the respondent agrees with the petitioner's view on that issue.

Summary Response

- Do not file a summary response unless you are willing to waive your appearance at any subsequent oral argument in the case. However, the Court may order oral argument and require appearance.
- A summary response need not comply with all the requirements for a brief set forth in this rule but must contain an argument responsive to the assignments of error with appropriate citations to the record on appeal
- Must exhibit clearly the points of fact and law being presented and the authorities relied on
- Must include a conclusion and a certificate of service as required by Rule 37

Step Five: The Reply

The Reply Brief

Reply (20 page limit)

- FILE the original and 10 copies with the Supreme Court Clerk
- SERVE 1 copy on each party to the appeal

The Reply Brief (cont'd)

- Be concise, less may be more
- Do not reiterate arguments you already made in the petitioner's brief
- Keep your brief to the rebuttal of important issues raised in the response brief(s) that were not covered in your petitioner's brief

Step Six: Consideration

Consideration by the Court

Once the time period to file a reply brief has passed, the appeal is deemed mature for consideration. Thereafter, the Court will:

- Decide the case on the merits without oral argument;
- Decide the case on the merits with oral argument (notice of oral argument will be sent to the parties); or
- Issue an appropriate order after considering the parties' arguments
- The parties will be notified in writing of any decision.

Types of Decisions: Memorandum Decisions, Signed Opinions, and Orders

- The Court may dispose of a case by memorandum decision or signed opinion.
- *State v. McKinley*, No. 13-0745 (Chief Justice Davis) (September 29, 2014). Holding that signed opinions containing original syllabus points have the highest precedential value. Signed opinions that do not contain original syllabus points also carry significant weight. Signed opinions should be the primary source relied upon in the development of the common law.

Memorandum Decision

- At any time after a case is mature for consideration, the Court may issue a memorandum decision addressing the merits of the case
- Memorandum decisions are decisions that are not signed and are not published. They may be cited as legal authority even though their value as precedent is more limited. When a conflict exists between a published decision and a memo decision, the published decision controls.
- The memorandum decision shall contain a concise statement of the Court's factual and legal reasoning, and a concise statement of the reason for issuing a memorandum decision instead of an opinion



Memorandum Decisions

A memorandum decision affirming the decision of the lower tribunal may be entered under Rule 21 when:

- The court finds no substantial question of law, and the Court does not disagree with the decision of the lower tribunal as to the question of law;
- Upon consideration of the applicable standard of review and the record presented, the Court finds no prejudicial error; or
- Other just cause exists.



The Final Step: The Mandate

Mandate

Rule 26

- Issuance of the mandate terminates the Supreme Court's jurisdiction over a pending matter, unless the Court has provided by order pursuant to Rule 25(a) that a petition for rehearing may be filed after a mandate has issued.
- Unless otherwise provided, an opinion of the Court or memorandum decision of the Court considering the merits of a case is not final until the mandate has been issued.



Other Matters

A Petition for Rehearing under Rule 25

- A petition for rehearing may be filed within thirty days of release of any memorandum decision or opinion of the Court
- The timeframe for filing a petition for rehearing may be shortened or enlarged by order of the Court



Consideration of the Petition for Rehearing

- When the time for filing a response has passed, the petition for rehearing will be deemed mature for consideration by the Court
- Upon its consideration, the Court may, in its discretion, refuse the petition for rehearing or grant the petition for rehearing.
- If granted, the Court can direct by order such further proceedings as are required, including issuing a modified opinion or memorandum decision, or taking such other action that is necessary to accomplish substantial justice in the case



Common Motion Issues

- Common motions received by the Court:
- Motions for extensions of time/to file out of time:
 - A motion for extension of time or to file out of time must demonstrate good cause.
 - The motion should be specific and indicate the time needed for the extension.
 - In cases involving children, the motion should also explain how the extension/delay will or will not affect the permanency and/or placement of the children.
- Motions to file by facsimile:
 - Filing by facsimile is permissible if leave is granted by the Court to do so. Any filing by facsimile must be accompanied by a motion to file by facsimile. If the filing is overly lengthy, it will not be accepted. If granted, you must follow up by mailing an original and the number of copies required by Rule 38.

Motions (Cont'd)

- Responses to Motions
 - Other parties generally have the opportunity to respond to motions. The response period is either two days or ten days depending on the type of motion. However, the Court may act upon a motion without a response in certain circumstances.

Comply with General Rule on Form for Filing

- Follow Rule 38- General Rule on form and filing of documents
 - Information on:
 - Paper size, format and spacing
 - Cover page and caption
 - Page limits and number of copies
 - Citations of authority
 - Facsimile filing
 - Filings immediately prior to argument
 - Improper form or filing
- Use the docket number assigned by the Court
 - Ex: 13-0123



Rule 38: Page limitations and number of copies

Document	Page Limit	Number of Copies
Notice of Appeal	Form plus required attachments	Original plus 5 copies
Petitioners Brief and Respondents Brief	40 pages	Original plus 10 copies
Reply Brief	20 pages	Original plus 10 copies
Summary Response	15 pages	Original plus 10
Appendix in Appeals from Circuit Court	None	Original and 1 copy
Appendix from Original Jurisdiction	None	Original and 1 copy
Workers compensation docketing statement	Required attachments	Original plus 3 copies
Petition for Bail and Response	15 pages	Original plus 10 copies

Document	Page Limit	Number of Copies
Workers Compensation Appendix	None	Original plus 1 copy
Workers Compensation Petitioners' Brief or Respondent's Brief	20 pages	Original plus 5 copies
Workers Compensation Reply Brief	10 pages	Original plus 5 copies
Original Jurisdiction Petition and Response	40 pages	Original plus 10 copies
Certified Question Joint Appendix	None	Original and 1 copy
Petition for Rehearing and Response	15	Original plus 10 copies
Motion and Response	15	Original plus five copies
Amicus Curiae Brief	25	Original plus 10
Appendix by Amicus Curiae	None	Original plus 1

Oral Arguments

- **Rule 19 Argument:** Rule 19 arguments are generally limited to ten minutes per side, unless otherwise indicated by the Court.
- **Rule 20 Argument:** Rule 20 arguments are generally limited to twenty minutes per side, unless otherwise indicated by the Court.
- Know your facts, especially the status of the children
- Know your legal authorities
- Time is not unlimited; present your strongest points
- Be direct. If you disagree with a point, say so, but concede if the facts and law require concession
- Offer syllabus points in Rule 20 cases

Sanctions

- Failure to comply with the Rules of Appellate Procedure may:
 - Affect future court appointments;
 - Result in sanctions by the Court; or
 - Result in a referral to Office of Disciplinary Counsel (ODC).

**“There cannot be too much advocacy
for children.”**

-Justice Workman



Conclusion

If you have any questions, please contact the Clerk's Office. We try to be as helpful as we can.



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