

9.23 Appeals

Effective 10/1/87

PURPOSE

In most judicial proceedings, including child protective cases, parties have the right to appeal the court's decision, based on the belief that legal error has occurred.

LEGAL BASE

1. Any of the parties (parents, child's guardian ad litem, the Department, other custodian) are entitled to appeal to have the legal sufficiency of the court's decision reviewed. The party appealing is the appellant; the other party is the appellee.
2. The two general categories of issues raised on appeal are:
 - a. Questions of law:
 - (1) Application of law (e.g., whether court applied proper legal standards; whether evidence was improperly admitted or excluded)
 - (2) Due Process (e.g., question of proper procedures in filing, content, or service of petition).
 - b. Findings of fact:

Findings of fact made by the District Court on the basis of the evidence presented cannot be set aside unless clearly erroneous; therefore appeal on this basis alone is rarely successful.
3. Jurisdictional questions including due process questions affecting jurisdiction may also be raised independent of an appeal, without a time limit; [e.g., months or years after a child was ordered into the custody of the department, the legality of the order could be challenged.] Therefore, it is imperative that careful attention be paid to proper procedures in all Child and Family Services proceedings, especially in:
 - a. Filing (e.g., proper jurisdiction and venue)
 - b. Content of petition
 - c. Notice and service
4. Jurisdiction for appeals:
 - a. Appeals regarding termination of parental rights are to the Maine Supreme Court (a/k/a the Law Court).
 - b. All other appeals are to the Maine Superior Court.
5. Notice of appeal must be filed by the appellant with the clerk of the original court:
 - a. Within 30 days for a termination of parental rights order.
 - b. Other orders: within 10 days if District Court, 20 days if Probate Court.
 - c. Under special extenuating circumstances, the time frame may be extended.
6. Court clerk mails copies of the Notice of Appeal to all parties; it is helpful if appellant gives the clerk sufficient copies.
7. Appellant's attorney is expected to also inform other parties/attorneys himself.

8. The clerk files the appeal in the Superior Court in the county in which the court originally hearing the case is located.
9. Pending action on the appeal, either the original court or the Superior Court may:
 - a. Let the order continue.
 - b. Grant a party's request to prevent the order from going in effect (a/k/a stay the order).
10. The appellant court's options are:
 - a. Decision upheld (original court's order continues in full force and effect).
 - b. Decision reversed, in whole or in part, and the order is vacated, in whole or in part.
 - c. Case remanded to original court for further proceedings.
 - d. Some combination of these.

PRACTICE STANDARDS

1. Appeals by the Department

- a. If worker and supervisor think the court order may be clearly erroneous and that it works an injustice to the child, his family, and/or the Department, they will discuss the case, and possible alternatives, with the Assistant Attorney General.
- b. The basis for an appeal must be related solely to evidence presented in the hearing.
- c. A request for a stay of the enforcement of the order will be considered when there is evidence that the child would be in immediate risk of serious harm if the order were to go into effect.
- d. Time frames for appeal action are short
 - (1) An appeal of the legal action will need to take place no later than 10 days after the order is docketed
 - (2) A stay must be requested no later than the effective date of the order. Usually a written order will specify the effective date. On occasion an oral order will contain the effective date. Therefore, consultation with supervisory and other staff, including Assistant Attorney General, must be requested *immediately*.
- e. An appeal may create case law which is binding on future cases, especially when reviewed by the Law Court (State Supreme Court). The department's actions and efforts are scrutinized, usually more thoroughly than those of the parents or the court. Therefore, the broader implications of appealing an order must be considered.
- f. If the caseworker and supervisor disagree with the Assistant Attorney General's recommendations, they will contact the Regional Program Manager. (See Legal Representation, Subsection L).
- g. Filing of appeals will be by the Assistant Attorney General, if appropriate.
- h. A written report from worker may be requested by the Assistant Attorney General prior to or after filing.
- i. All other parties will be informed of intent to appeal or filing of an appeal, orally or in writing, by either the Assistant Attorney General or the caseworker.

2. **Alternative Actions**

- a. An appeal to the Superior Court may take 6 to 9 months to resolve, and another 6 to 9 months if the decision of the Superior Court is appealed to the Law Court (a/k/a Maine Supreme Court).

Other legal action may be considered, such as filing a motion for Judicial Review, a motion to reconsider, a motion to Set Aside Order, or a new petition for a child protection order.

- b. Because of the brief time frame for filing some of these motions, the Assistant Attorney General must be consulted *immediately* if there are concerns about an order.

3. **Appeals by other parties**

- a. As soon as staff become aware that an appeal is likely or has been filed, the Assistant Attorney General will be contacted.
- b. The Department may join in the appeal with another party (e.g., the child's guardian ad litem).
- c. The Assistant Attorney General may request written report from the caseworker. Staff will check with the court to determine whether original order is continued or modified, pending appeal.

PROCEDURES

1. Copies of relevant documents will be secured from the court, if not already received by field office or Assistant Attorney General:
 - a. Notice of Appeal (if filed by other party)
 - b. Modification order of the court, if any.
2. Copies of these documents will be sent to Assistant Attorney General, unless the Assistant Attorney General already has them.
3. Findings/orders of Superior Court will be routed to Assistant Attorney General in the same manner as the original decree.
4. Director, Division of Child and Family Services will be promptly informed by memo when any child protection order is appealed.