



THE ENFORCER

BY DAVID FINDLING

THE FINDLING LAW FIRM

WWW.FINDLINGLAW.COM

WWW.COURTAPPOINTEDRECEIVER.COM

WITH SPECIAL THANKS TO ERICA J. EHRLICHMAN, ESQ., JOHN W. POLDERMAN, ESQ. AND KRISTY L. BIDDINGER, ESQ., FOR THEIR INVALUABLE ASSISTANCE IN PREPARATION.

IT SOUNDS APPEALING

I am going to appeal and take this case all the way to the Supreme Court! Post judgment, your opposing counsel states that he is going to appeal a post-judgment order. What is the *right of appeal*? What is a final judgment? This article will review the jurisdiction of the Court of Appeals in civil cases and its ability to consider a "claim of appeal".

Claims of Appeal under the Michigan Court Rules

The jurisdiction of the Michigan Court of Appeals to entertain a claim of appeal is limited by MCR 7.203. In civil cases, the Court of Appeals only has jurisdiction to hear claims based on a *final judgment* and claims under 7.203(A)(1)(a)(iii-v). MCR 7.203(A)(1) provides:

(A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) A final judgment or final order of the circuit court, or court of claims, as defined in MCR 7.202(6), except a judgment or order of the circuit court

(a) on appeal from any other court or tribunal;(ii) an order designated as final under MCR 2.604(B);

An appeal from an order described in MCR 7.202(6)(a)(iii) (v) is limited to the portion of the order with respect to which there is an appeal of right.

How do the Court Rules define a *final judgment*? For the definition, we need to refer to MCR 7.202(a)(6). It states:

(6) "final judgment" or "final order" means:

(a) In a civil case,

(i) the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order;

(ii) an order designated as final under MCR 2.604(B);

(iii) in a domestic relations action, a postjudgment order affecting the custody of a minor,

(iv) a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or court rule,

(v) an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7) or an order denying a motion for summary disposition under MCR 2.116(C)(10) based on a claim of governmental immunity;

It is important to recognize MCR 7.203(A)(1)'s limitation of claims of appeal to the *first* final judgment. In some civil cases, there can be more than one final judgment. A subsequent final judgment is not subject to a claim of appeal. A good



example is a third party complaint. Though the underlying complaint may be resolved, the subsequent resolution of the Third Party Complaint may not allow for a claim of appeal. Instead, the appellant would be required to file an application for leave to appeal under MCR 7.205. It provides:

(A) Time Requirements: An application for leave to appeal must be filed within

(1) 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule; or

(2) 21 days after entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed, if the motion was filed within the initial 21 day appeal period or within further time the trial court has allowed for good cause during that 21 day period.

In this author's experience, a motion to dismiss a claim of appeal of a subsequent final judgment will be promptly granted by the Court of Appeals.

QDRO/EDRO/FEDERAL RETIREMENT ORDER PREPARATION

– All phases of project handled by Michigan attorney with over 25 years' experience –

- COMPARE:**
- ** \$400 most orders flat fee
(additional \$50 if court certification required)
 - ** Minimum 25% discount on same case
multiple order preparation
 - ** Review and analysis of other orders available
 - ** Fee includes preparation, entry with the Court,
forwarding to Plan Administrator, follow-up for acceptance
 - ** Prompt response

For more information please contact:

Attorney Mark Cherniak

LAW OFFICE OF MARK S. CHERNIAK, P.C.

10242 Joseph Campau • Hamtramck, MI 48212

(313) 871-0742 • (313) 873-1750 (fax)

Mark@QDRO-Services.com (e-mail) • visit QDRO-Services.com (website)

