
CIVIL LITIGATION
FOR YOUNGER LAWYERS

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HANDLING APPEALS AFTER TRIAL

**APPELLATE PRACTICE
IN THE
COURT OF APPEALS OF GEORGIA**

by

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INTRODUCTION

For the purposes of this seminar, the appellate procedures of the Court of Appeals of Georgia are best understood by tracking a case through the process and seeing what actions are taken by the Court and its staff at each stage. This paper describes the internal process and attempts to answer questions most frequently asked by lawyers as their cases work their way through the Court of Appeals from docketing to reconsideration.

**TRACKING CASES IN THE COURT OF APPEALS
FROM DATE OF DOCKETING TO FINAL DISPOSITION**

There are three ways to appeal cases to the Court of Appeals of Georgia. Direct Appeals (OCGA §5-6-34[a]), Interlocutory Applications (OCGA §5-6-34[b]), and Discretionary Applications (OCGA § 5-6-35).

DIRECT APPEALS

DOCKETING

Direct appeals are docketed in the Court of Appeals after a Notice of Appeal is filed in the trial court and the clerk of the trial court has prepared and transmitted a copy of whatever portion of the trial court record was designated by the appellant in the Notice of Appeal. If a transcript of trial court proceedings is requested for inclusion, it would be transmitted by the trial court clerk along

When all the required data fields have been filled with the pertinent case information, the court's computerized docketing system is given the command to assign the case to a division of the Court of Appeals, and to a judge within that division. The cases are randomly assigned by the computer on one of four wheels. Each judge on the Court of Appeals receives an equal number of civil and criminal direct appeals and an equal number of interlocutory and discretionary applications.

As soon as the direct appeals are docketed, the entire record is transmitted to the Court's central staff attorneys. A central staff attorney reviews the record, the Notice of Appeal and the order or judgment being appealed to identify jurisdictional issues. If a central staff attorney determines that a case may be improperly before the Court, he or she will do a memorandum of law to the Court outlining his or her concerns. For example, if the case is involving murder, for which the Supreme Court has general appellate jurisdiction, central staff will do a memorandum recommending the case be transferred to the Supreme Court. If the Notice of Appeal is filed more than thirty days beyond the date of the entry of the order or judgment being appealed, the central staff attorney's memorandum to the Court will point out the jurisdictional problem with the result that the case will be dismissed by the Court for failure to comply with the time requirements for filing a Notice of Appeal. (OCGA § 5-6-38). Judges on the division to which the case is assigned may or may not agree with the recommendations of central staff on jurisdictional issues. After reviewing the case record along with the central staff memo, the Court will issue an appropriate order. The judges on the division must unanimously agree that the Court lacks jurisdiction for an appeal to be dismissed at this stage. If one or more judges on the panel dissent on the jurisdictional issue, the case will be circulated to a seven judge court for decision on dismissal.

are due, the process for requesting oral argument and the tentative dates for oral argument should oral argument be granted.

BRIEFS

Appellant's brief is due twenty days from the date of docketing, (Rule 26), not twenty days from the date counsel or pro se parties receive the docketing notice. A single copy of the Enumeration of Errors, a separate pleading, is no longer required, however the Enumeration of Errors must still be Part II of Appellant's Brief also due within twenty days of the date of docketing. (OCGA §5-6-40) (Rules 6 and 22). All filings in the Court of Appeals should contain an original and two copies, and should be backed with white manuscript cover, should contain a Certificate of Service and service must be made on opposing counsel. (Rules 1[c] and Rule 6).

Appellant's brief must be accompanied by an \$80.00 filing fee or a sufficient pauper's affidavit. The clerk is prohibited by statute from receiving the appellant's brief unless the costs have been fully paid. (OCGA §5-6-4). Appellee has twenty days from the date of filing of the appellant's brief or forty days after the date of docketing, whichever is later, to file appellee's brief. (Rule 26[b]).

When the original and two copies of the appellant's brief are docketed with the Court, they are distributed to the judges on the division to which the case is assigned, and work commences on the case. Similarly, when the original and two copies of appellee's brief are filed, they are likewise distributed to the judges on the division.

If oral argument has been requested and granted, a calendar of the oral argument dates is mailed to counsel and pro se parties approximately twenty days before oral argument. Counsel who have received an order from the Court granting oral argument, or who have requested oral argument

ORAL ARGUMENT

see note

A request for oral argument must be filed within twenty days of the date a case is docketed. A motion for an extension of time to file brief and Enumeration of Errors does not extend the time to request oral argument. A request for oral argument which is timely filed is reviewed by the division to which the case is assigned. Oral argument is granted if any one judge on the division wants to hear argument.

TWO TERM RULE

After the case has been fully briefed, and argued, if applicable, the Court will render a disposition within two terms of the date the case is docketed for hearing. The "two-term" rule is a constitutionally mandated time frame for appellate decision making. Article VI, Section IX, Paragraph II of the Constitution of the State of Georgia requires that "The Supreme Court and the Court of Appeals shall dispose of every case at the term for which it is entered on the Court's docket for hearing at the next term." This "two-term rule" provides that in any appeal not decided within two terms the decision of the trial court is affirmed by operation of law. The triggering date for the first term is not the date the case is docketed with the Court, but the date the case would come on for hearing if oral argument is requested and granted. For instance, a case filed on April 30th is filed during the April Term. However, that case would be docketed to the September oral argument calendar. Since the September Call is in the September Term, the case docketed April 30th would be docketed to the September Term and the Court would have the September Term and the January Term to dispose of the case.

for Reconsideration of a Court of Appeals decision is not a prerequisite to filing a writ of certiorari in the Supreme Court, though it is still necessary to file the notice of intent with the Court of Appeals. Whether following an order on a Motion for Reconsideration or by-passing the Motion for Reconsideration, the notice of intent may be filed by certified mail; it is not necessary that the notice of intent be physically filed in the Court before the expiration of ten days.

Parties may, with leave of Court, file a second Motion for Reconsideration if the Court of Appeals dismisses or denies a Motion for Reconsideration. Be alert because filing a second Motion for Reconsideration does not toll the running of the ten day period for filing the notice of intent to apply for certiorari. That period may run before the Court acts on the request for a second Motion for Reconsideration. If the request for a second Motion for Reconsideration is denied and the ten day period has run, the subsequent Application for Certiorari is subject to dismissal by the Supreme Court.

After the Supreme Court has acted upon an Application for Certiorari and completed its review of a case, the record is returned to the Court of Appeals along with the Supreme Court's remittitur. The Court of Appeals then sends out its remittitur to the trial court. In cases which are not appealed to the Supreme Court, the Court of Appeals will send out the remittitur approximately 15 to 20 days after the date of the order or opinion disposing of the case. The remittitur returns jurisdiction to the trial court. At that time, any stay which is in effect because of the filing of the Notice of Appeal is lifted.

When the remittitur is returned to the trial court, the Court of Appeals loses jurisdiction over the matter. The remittitur cannot be recalled unless it was issued through fraud, inadvertence,

jurisdictional, and the Court requires a stamped filed copy of the order and the certificate to ascertain that the applicant has met the time deadlines.

The application is docketed the day it is filed with the Court of Appeals. If the application is filed by certified mail and satisfies the requirements of Rule 4 of the Court of Appeals, the application is docketed as of the date of mailing. The respondent has ten days from the date of docketing to file a response to the application, though no response is required. In order to protect a respondent who chooses to file a response, it is imperative that the applicant serve respondent with a copy of the application prior to offering the application for filing with the Court of Appeals.

When the Court receives and enters the application on the docket, a docketing notice is mailed to counsel for the applicant and to counsel for the respondent named in the Certificate of Service. As noted, the respondent has ten days to file a response to the application. The Court has thirty days from date of docketing to grant, deny or dismiss the application. An application will be dismissed if the Court lacks jurisdiction or if the application is procedurally defective. An application will be denied if it does not demonstrate that there was a likelihood that reversible error was committed by the trial court or that an opinion by the Court of Appeals will end the case. An application which is dismissed is generally accompanied by an order stating why the application was dismissed.

If the application is granted, an order is entered and mailed to the parties indicating that the appeal will be allowed. The applicant has ten days from the date of the order granting the application to file a Notice of Appeal with the trial court. Thereafter, the appeal is treated like any other direct appeal. No remittitur goes out on dismissed or denied applications. If the Court of Appeals dismisses or denies the application, it means that the Court elected not to take jurisdiction. A Motion for

As with interlocutory appeals, any party may file a Motion for Reconsideration or a notice of intent to apply for a writ of certiorari as to any order granting, denying or dismissing an application for discretionary appeal, following the same procedures as set out for direct appeals.

As with interlocutory applications, no remittitur is sent to the trial court after an order denying or dismissing a discretionary application, since the Court elected not to accept jurisdiction in the matter. If the discretionary application is granted, the applicant has ten days from the date of the order granting the application to file the Notice of Appeal with the trial court. The appeal would then proceed as any other direct appeal.

RULE 40(b) MOTIONS

In addition to direct appeals, applications for interlocutory appeal and applications for discretionary appeal, cases can come to the Court of Appeals by emergency motion filed under Rule 40 (b) of the Court of Appeals. Rule 40(b) provides:

"In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. Generally, no order will be made or direction given in an appeal until it has been docketed in this Court."

If a case has not yet been docketed in the Court of Appeals, a Rule 40(b) motion must be accompanied with an \$80.00 filing fee or sufficient pauper's affidavit. As soon as Rule 40(b) motions are received, they are docketed and immediately taken to the Court. Service on opposing counsel