

**LAW RELATED EDUCATION CONSORTIUM  
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**HANDLING APPEALS ADMINISTRATIVELY  
IN THE COURT OF APPEALS OF GEORGIA**

William L. Martin, III  
Clerk/Court Administrator  
Court of Appeals of Georgia

Thank you for permitting me to meet with you today. I would like to talk to you briefly about how appeals are handled administratively by the Office of the Clerk of the Court of Appeals of Georgia.

Basically, there are three ways to appeal a case in Georgia. One is by filing a direct appeal, which is initiated by filing the Notice of Appeal in the trial court. The second way is to file an interlocutory application and the third way is to file a discretionary application.

## **DIRECT APPEALS**

Direct appeals are initiated by filing a Notice of Appeal in the trial court. The Notice of Appeal sets out the lower court case number, the style of the lower court, the lower court county, judgment and judge. The Notice of Appeal also states what portion of the record will be admitted, if any, for the record on appeal and also whether a transcript of evidence of proceedings will be filed for inclusion with the record on appeal.

The Notice of Appeal must have the complete address of the person filing the Notice of Appeal and the Certificate of Service on the Notice of Appeal must have the complete address of the person being served with the Notice of Appeal. These addresses are necessary in order for the clerk's office in the Court of Appeals to docket the appeal.

The clerk of the trial court will prepare the record according to the Notice of Appeal. The clerk will arrange the record in chronological order, paginate the record, index the record, certify the record and transfer the record to the Court of Appeals. If the transcript is to be filed also, the transcript must have the certification of the court reporter and the clerk of the trial court.

When the clerk's office receives the record, as certified by the trial court clerk, the Court of Appeals clerk's office will docket the appeal, if we are physically able to do so. The record must contain a final, or appealable order. Without a final or appealable order, there is nothing for the appellate courts to consider.

The record must also contain a stamped filed copy of the order or judgment being appealed. There are certain time frames that are jurisdictional. Without a stamped filed copy of the order or judgment being appealed, the Court of Appeals cannot know if the Notice of Appeal has been timely filed.

If the record is complete, the clerk's office docketed the record and it is assigned by the Court's computerized docketing system, to one of four "wheels". These wheels assign cases as civil direct, criminal direct, interlocutory application and discretionary application. Each judge on the Court of Appeals of Georgia will receive an equal amount of civil and criminal direct appeals and interlocutory and discretionary applications, insofar as the number of filings will permit.

After the clerk's office, via its computerized docketing system, assigns the case to a particular judge and a panel, the clerk's office notifies the parties of the fact that the case has been docketed by sending out Docketing Notices. The Docketing Notices contain a briefing schedule and other important information. Simultaneously, the clerk's office sends the Docketing Notices to the judge's offices so they will be aware that a case has been assigned to that office for purposes of drafting an opinion.

After the appeal is docketed, it is the responsibility of the clerk's office to make sure that the briefs and other documents and pleadings filed by the parties are properly docketed and delivered to the respective judge's office. After the Court has issued an opinion or order dispositive of the appeal, it is also the clerk's office responsibility to make sure that the Court's opinion or order is delivered to the parties promptly. Many steps of the appellate process are time sensitive and failure to deliver the results of the Court's work may prejudice the rights of the parties.

After the Court of Appeals disposes of the matter, the parties have the right to apply for certiorari to the Supreme Court of Georgia which has the prerogative to grant discretionary review of the actions of the judges of the Court of Appeals.

## INTERLOCUTORY APPLICATIONS

Interlocutory applications are appeals to the appellate courts prior to the disposition of the matter in the trial court. Interlocutory means provisional, temporary, not final or in the middle of. An interlocutory application is one in which the parties request the trial court to grant a Certificate of Immediate Review. The granting of a Certificate of Immediate Review is discretionary with the trial court. If the trial court believes the matter to be appealed is of such importance that it should be heard prior to trial, then the trial court can issue a Certificate of Immediate Review. Thereafter, the application is filed directly with the Court of Appeals. If the Court of Appeals feels the issues presented are of such significance that there should be appellate review before the case is heard in the trial court, then the Court of Appeals can grant the Certificate of Immediate Review.

The Certificate of Immediate Review must be filed with the clerk of the trial court, or “entered” within ten (10) days of the date of the entry of the order or judgment for which interlocutory application is sought. Thereafter, the application of interlocutory appeal must be filed with the Court of Appeals within ten (10) days of the date of the entry of the Certificate of Immediate Review. Generally, the Court of Appeals will grant an application for interlocutory appeal if it appears from the documents submitted that the issue to be decided appears to be:

- 1) dispositive of the case, and;
- 2) the order appears erroneous and will probably cause a substantial error at trial or adversely effect the rights of the appealing parties until the entry of the final judgment;
- 3) the establishment of a precedent is desirable.

Interlocutory applications are filed directly with the Court of Appeals. Again, the same docketing processes that apply to direct appeals apply to interlocutory applications. A response may be filed, but is not required. The Court of Appeals has 45 days from the date of the filing of the interlocutory application to issue an order granting, denying or dismissing the application.

If the Court dismisses the application, it means there was a procedural defect the Court did not have jurisdiction to hear it. If the Court denies the application, it means the Court had reviewed the application in context but finds the merits wanting or lacking. If the Court grants the application, then the party has ten (10) days from the date of the order granting the application to file a Notice of Appeal in the trial court. Thereafter, the appeal would proceed as any other direct appeal.

## **DISCRETIONARY APPLICATIONS**

There are twelve (12) types of cases in which discretionary applications may be filed with the Court of Appeals. Eleven (11) are listed in OCGA §5-6-35. The twelfth is the Prisoner Litigation Reform Act of 1996 which is listed at OCGA §42-12-1 et seq. The General Assembly in Georgia has determined these twelve types of cases are ones in which the citizens of Georgia do not have the right of direct appeal. However, the citizens can petition the appellate courts for permission to appeal. The types of cases that are required for discretionary application are:

- 1) appeals from administrative law judges and administrative boards;
- 2) appeals from domestic matters;
- 3) appeals involving a dispossessory once in which the only issue is to be determined is rent in the amount of \$2,500.00 or less;
- 4) appeals from cases involving garnishment;
- 5) appeals from orders revoking probation;
- 6) appeals from all actions or damages in which the judgment is \$10,000 or less (but not zero);
- 7) appeals when separate from the original appeal from denial of an extraordinary motion for new trial;
- 8) appeals from orders under subsection (d) of OCGA §9-11-60 denying a motion to set aside a judgment;
- 9) appeals from orders granting or denying temporary restraining orders;
- 10) appeals from awards of attorneys fees or expenses for litigation in OCGA §9-15-14;

- 11) appeals from decisions of state courts reviewing decisions of the magistrates courts de novo;
- 12) appeals involving the Prisoner Litigation Reform Act of 1996.

Generally, applications must be filed within 30 days of the date of the entry of the order or judgment in which the appeal is sought. However, an appeal from a dispossessory proceeding must be filed within seven (7) days. Again, discretionary applications are filed directly with the Court of Appeals and should the Court grant the application, the party will have ten (10) days from the date of the order granting the application to file the Notice of Appeal.

Discretionary applications must be decided by the Court of Appeals within 30 days of the date the application is filed with the appellate court, that decision being to dismiss, deny or grant, those standards being the same as for interlocutory applications.

Those are basically the three ways in which you can appeal a case in the Court of Appeals of Georgia. The clerk's office charge the responsibility of insuring that the applications and briefs, direct appeals, are properly docketed or transmitted to the judges' offices for review. With approximately 3,500 cases a year being processed by the Court of Appeals of Georgia, and the constitutional requirement that the appellate courts dispose of every matter within two terms, or the statutory requirement that applications be disposed of within 30 or 45 days, the burdens on the clerk's office and the judges of the Court of Appeals of Georgia and their staffs are quite significant.