

COURT OF APPEALS OF GEORGIA

TIME LINES

Not a week goes by that I do not receive a call from an attorney or pro se party inquiring about filing deadline dates and time frames in the Court of Appeals of Georgia. Deadline dates under the Appellate Practice Act (OCGA §5-6-1, et seq.) are very important since they are usually jurisdictional. Additionally, deadlines under the rules of the Court of Appeals are likewise important. Failure to comply with a time deadline as ordered by the Court or under the Court's rules may result in the dismissal of an appeal, non-consideration of a brief, or non-consideration of a Motion for Reconsideration. Additionally, if you are tardy in filing a Motion for Reconsideration or Notice of Intent to Apply for Certiorari, it may result in the Supreme Court of Georgia refusing to hear your application.

The following is an attempt to clarify and delineate some of the filing times and deadline dates in the Court of Appeals of Georgia.

The general law in the computation of time provides that the first day shall not be counted but the last day shall be counted, unless the last day falls on a Saturday, Sunday or a public and legal holiday. See OCGA §1-3-1. For example, if an order from the Court of Appeals requires action within ten (10) days of the date of the order, and the order is dated the 10th, counting would begin

Reconsideration within five (5) days of the filing of the motion. See generally Court of Appeals Rule 45(f).

The obvious policy behind the Parental Notification Act and Court of Appeals Rule 45 is to expedite the appeal. In situations where the right of an unemancipated minor to have an abortion is being litigated, delay in the decision on an abortion may be critical.

There are other five (5) day deadlines in the Court of Appeals of Georgia. Under Rule 28(a)(2), a party desiring additional time at oral argument must file a written motion with the Court at least five (5) days before the date set for the call of the case. The same deadline applies if counsel wish companion cases to be argued as separate cases. In any case set for oral argument, in which a party or parties wish to exclude the public, such party or counsel must file a motion to that effect, not later than five (5) days prior to the oral argument date. Rule 28(g). Of course, to obtain the relief sought, the Court must grant such motions.

OCGA §5-6-43(a) provides that within five (5) days after the filing of the transcript of evidence and proceedings by the appellant or appellee, as the case may be, it shall be the duty of the clerk of the trial court to prepare a complete copy of the entire record of the case, omitting only those things designated for omission by the appellant and which were not designated for inclusion by the appellee, along with a copy of the Notice of Appeal, with the date of filing thereon, and transmit same together with the transcript of evidence and proceedings, if appropriate, to the appellate court, with the applicable certificates of the trial court clerk and court reporter. If the trial court clerk is

application is filed. Generally, the Certificate of Immediate Review is discretionary with the trial court. However, see *Waldrip v. Head*, 272 Ga. 572 (2000).

If the Court of Appeals should grant an interlocutory application or a discretionary application, the parties have ten (10) days from the date of the order granting the application to file the Notice of Appeal in the trial court. OCGA §§5-6-34(b) and 35(g). Failure to file the Notice of Appeal within ten (10) days of the date of the order granting the application will most likely divest the appellate court of jurisdiction to hear the appeal in the granted application.

Motions for Reconsideration must be filed within ten (10) days of the date of the order or the judgment for which reconsideration is sought. See Court of Appeals Rule 37(b). Also, the Certified Mail rule, Rule 4, does not apply to Motions for Reconsideration, so the Motion for Reconsideration must be physically filed with the Court within ten (10) days.

The Notice of Intent to Apply for Certiorari in the Supreme Court of Georgia shall be filed with the clerk of the Court of Appeals within ten (10) days after the judgment or, if a Motion for Reconsideration is filed, within ten (10) days after the order ruling on reconsideration. See Court of Appeals Rule 38(a). **Please be advised that there is no ten (10) day rule for time to respond to motions in the Court of Appeals.** Parties should file responses to motions as soon as they deem necessary. Court of Appeals Rule 41(d).

Appellee has 40 days from the date of docketing or 20 days after the Appellant's Brief is docketed, whichever is later, to file Appellee's Responsive Brief. Also, if appellant wishes to file a Reply Brief, appellant has 20 days from the date Appellee's Brief is filed to file a Reply Brief. Reply Briefs are not mandatory. See Rule 26.

The parties have 20 days from the date of docketing to file a request for oral argument. An extension of time to file a brief does not extend the time to file a request for oral argument. Rule 28(a)(1). A request for oral argument which is timely filed is considered by three (3) judges; the vote of any one judge to grant will put the matter on for argument. An untimely request to argue is considered only by the judge to whom the case has been assigned for the purposes of drafting the opinion, and does not circulate to the other judges on the panel, unless the assigned judge should choose to do so.

Also, Court of Appeals Rule 44 requires parties moving to recuse or disqualify a judge to file such motion within 20 days of docketing, unless good cause has been shown for failure to meet such time requirement.

The last 20-day requirement in the Appellate Practice Act is found in OCGA §5-6-48(c). This code section states that no appeal shall be dismissed for failure to pay costs if costs were paid within 20 days (exclusive of Saturdays, Sundays and legal holidays) of receipt by the appellant of notice, mailed by registered or certified mail, of the amount of cost. This notice is provided by the trial court.

of every case at the term for which it is entered on the Court's docket for hearing or at the next term." The so-called "two term rule" means that the appellate courts must dispose of the case at the term for which it is docketed for hearing, or oral argument, or at the following term. If the appellate courts fail to dispose of an appeal within the time frames prescribed by the Constitution, the case is affirmed by operation of law. That is, the appellate courts lose jurisdiction. It is as if the case were never appealed. As far as anyone knows, the appellate courts have never permitted a case to be affirmed by operation of law and have always complied with the constitutional mandate of the two term rule.

Finally, the last time deadline in the Court of Appeals Rules deals with the Court's Record Retention Schedule. Under Rule 42(b), one year after remittitur has issued, the party paying for the trial court record and transcript may claim them. Otherwise all records and transcripts will be recycled, unless the parties notify the clerk, in writing, that the trial court record should be maintained, and the reason therefore.

The trial court maintains the original record and sends the appellate courts a copy. Since 1993 State Archives has refused to take additional paper records from the appellate courts. The Court of Appeals has instituted a Record Retention Schedule to recycle copies of records. The Court of Appeals maintains the original appellate court filings such as briefs, substantive motions, orders on the motions, opinions and docketing notices and the like on microfilm, with a reader copy available in the clerk's office and permanent copies on file with State Archives.

TIME LINES CHART

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| 5 days | Expedited Appeals under the Parental Notification Act OCGA §15-11-114(e); Rule 45(b) and (e) | Motions for Reconsideration under Parental Notification Act Rule 45(f) | Notices for oral arguments, Rule 28(a)(2) and (g) | Transcripts of Evidence OCGA §5-6-43(a) |
| 7 days or less | Dispossessory - filing of Notice of Appeal or if required, discretionary application OCGA §44-7-56 | | | |
| 10 days | Certificate of Immediate Review OCGA §5-6-34(b) Filing Notice of Appeal on granted application. OCGA §5-6-34(b) and 35(g) | Motions for Reconsideration Rule 37(b) Notice of Intent to Apply for Certiorari in the Supreme Court Rule 38(a) | Responses to Interlocutory or Discretionary applications OCGA § 5-6-34(b) and 35(e) | Counsel not receiving an oral argument calendar should contact the clerk's office Rule 14(b) |
| 14 days | Oral Argument calendars mailed out Rule 14(a) | | | |
| 15 days | Appellee has 15 days from date of service of appellants Notice of Appeal to file Notice of Cross Appeal OCGA §5-6-38(a) | Appellee has 15 days from date of service of Notice of Appeal to file a designation of record with the trial court clerk. OCGA §5-6-42 | | |

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| 20 days | For trial court clerk to transmit record if no transcript is to be sent up. OCGA §5-6-43(a) | | | |
| 20 days | Appellant's Brief and Enumeration of Errors Rule 26(a) | Appellant has 20 days from Appellee's brief to file Reply Brief Rule 26(c) | From date of docketing to request oral argument Rule 28(a)(1) | From date of docketing to file a Motion to Recuse Judge Rule 44(a) |
| 20 days | No appeal shall be dismissed for failure to pay costs if costs were paid within 20 days of receipt by the appellant of notice, mailed by registered or certified mail, of the amount of cost. OCGA § 5-6-48(c) | | | |
| 30 days | Notice of Appeal must be filed with the trial court within 30 days after the entry of an appealable decision or judgment OCGA §5-6-38(a) | Discretionary Applications must be filed within 30 days of the entry of the appealable order or judgment OCGA §5-6-35(d) | Court must issue order granting, denying or dismissing discretionary applications within 30 days of docketing. OCGA §5-6-35(f) | To file transcript with the trial court. OCGA §5-6-42 |
| 40 days | Appellee has 40 days or 20 days after the Appellant's Brief is docketed, whichever is later to file Appellee's Brief Rule 26(b) | | | |

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| 45 days | Court must issue an order on Interlocutory Applications within 45 days granting, denying or dismissing. OCGA §5-6-34(b) | | | |
| Two Terms | Constitutional requirement of appellate courts to dispose of cases. Article VI, Sec IX, Para II, Ga Const. of 1983. | | | |
| 1 year | Court's Record Retention Schedule, one year after remittitur has gone out the party paying for the record or transcript may claim them. Rule 42(b) | | | |