

NOTES ON  
EXPEDITING TERMINATION OF PARENTAL  
RIGHTS APPEALS

Book one  
how the law is changing

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## How the law is changing

### **I. HB-369 amends O.C.G.A. §5-6-35(a)(12) by making TPR appeals discretionary:**

Said article is further amended by revising subsection (a) of Code Section 5-6-35, relating to cases requiring application for appeal, as follows:

"(a) Appeals in the following cases shall be taken as provided in this Code section:

(1) Appeals from decisions of the superior courts reviewing decisions of the State Board of Workers' Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by certiorari or de novo proceedings; provided, however, that this provision shall not apply to decisions of the Public Service Commission and probate courts and to cases involving ad valorem taxes and condemnations;

(2) Appeals from judgments or orders in divorce, alimony, ~~child-custody~~, and other domestic relations cases including, but not limited to, granting or refusing a divorce or temporary or permanent alimony, ~~awarding or refusing to change child-custody~~, or holding or declining to hold persons in contempt of such alimony or ~~child-custody~~ judgment or orders;

(3) Appeals from cases involving distress or dispossessory warrants in which the only issue to be resolved is the amount of rent due and such amount is \$2,500.00 or less;

(4) Appeals from cases involving garnishment or attachment, except as provided in paragraph (5) of subsection (a) of Code Section 5-6-34;

- (5) Appeals from orders revoking probation;
- (6) Appeals in all actions for damages in which the judgment is \$10,000.00 or less;
- (7) Appeals, when separate from an original appeal, from the denial of an extraordinary motion for new trial;
- (8) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a motion to set aside a judgment or under subsection (e) of Code Section 9-11-60 denying relief upon a complaint in equity to set aside a judgment;
- (9) Appeals from orders granting or denying temporary restraining orders;
- (10) Appeals from awards of attorney's fees or expenses of litigation under Code Section 9-15-14; and
- (11) Appeals from decisions of the state courts reviewing decisions of the magistrate courts by de novo proceedings so long as the subject matter is not otherwise subject to a right of direct appeal; and
- (12) Appeals from orders terminating parental rights."**

## **II. Effective date**

### **HB-369 SECTION 8, as signed by the Governor:**

"This Act shall become effective on January 1, 2008, and shall apply to all child custody proceedings and modifications of child custody filed on or after January 1, 2008."

For juvenile court purposes it should apply to all termination of parental rights petitions that are filed in your court on or after January 1, 2008.

*Although the statement above is correct, it is my interpretation of the*

*statute that the discretionary application procedures will apply to any appeal of a termination of parental rights case docketed in this Court on or after January 1, 2007 which would also include TPR cases in which the order being appealed was issued up to 30 days before January 1, 2007.*

**III. The process to apply for a discretionary appeal is controlled by the Court of Appeals Rules and by Georgia Code.**

A. Neither the trial judge nor trial court clerk has anything to do with the process.

B. The party desiring to appeal must file an ***Application to Appeal*** within 30 days of the date of entry (filing) of the final TPR order. Rule 32

1. The Application must include \$85.00 filing fee or pauper's affidavit.

Rule 31

*The Court of Appeals filing fee is \$80.00 O.C.G.A. § 5-6-4.*

2. The Application may be no longer than 30 pages excluding exhibits and parts of the record. Rule 31. Exhibits should include a copy of the underlying petition that led to the TPR. The Application should include a certificate of service attesting to service on the opposing parties prior to filing. O.C.G.A. §5-6-35 and *Court of Appeals Rule 6.*

3. The Application must be sufficient to apprise the court of appellate issues, in context, and support the arguments advanced. Rule 31

4. The Application must contain a stamped "filed" copy of the final order that includes the judge's signature. (It may not be a confirmed ( *conformed*) signature. It does not have to be a certified copy.) Rule 31

*(A recent opinion of the Georgia Supreme Court, Hood v. State, SC0G0412 stated that the lack of a signature in a pleading is an amendable defect. So it seems that the Clerk of the Court of Appeals would now have to accept a conformed signature, but the Court could then ask for the defect to be corrected by filing of a copy with the proper signature.)*

5. Once the Application is filed the Clerk of the COA will mail a notice of docketing date and briefing schedule to each attorney. Rule 13

*(The briefing schedule applies only to direct appeals. The docketing notice for applications instead includes a statement about the time in which to submit a response.)*

6. Responses are not required but the respondent has 10 days after docketing of the Application to file a response. Rule 31

7. There will be no extensions of time granted. Rule 31

9. If the Application is granted, appellant must file a Notice of Appeal with the trial court within 10 days of the grant. Rule 31

*(Perhaps a more accurate statement would be that the Notice of Appeal must be filed with the trial court within 10 days of the entry of the order granting the application.)*

10. As soon as practical after judgment the Clerk will copy the lawyers and the trial judge with the judgment. Rule35

*(The judgment in an application is the Court's order dismissing, denying or granting the application. The date the order is issued, a copy is mailed to the attorneys, trial court judge and trial court clerk.)*

11. Remittiture (*remittitur*) shall be transmitted to the clerk of the trial court as soon as practicable after the expiration of 10 days from the date of the judgment. Rule 39

*(Remittitures are not issued after disposition of a discretionary application. Since the application process is a way for the Court of Appeals to determine if it wishes to consider an appeal, the Court of Appeals has not assumed jurisdiction over the case. Therefore, there is no need for a remittitur to return jurisdiction to the trial court as there is in direct appeals.)*

#### **IV. The COA process to decide the Application to Appeal**

A. All Applications for Appeal are assigned on a separate wheel.

B. Each Application will be determined by a three judge panel.

1. **Any one of the three judges** can grant the Application to Appeal. It will only be granted if:

a. "Reversible error appears to exist; or

b. The establishment of a precedent is desirable." Rule 31

2. The COA will decide whether to grant or deny the Application within 30 days of docketing. O.C.G.A. §5-6-35

C. If the Application is granted the case goes back to the general case assignment wheel where it is likely to be assigned to a different panel if and when the Appellant actually files an appeal.

*(If an application is granted and the party files a Notice of Appeal, upon receipt of the Notice of Appeal and record from the trial court, the appeal is docketed in the Court of Appeals and assigned on a separate assignment wheel for direct appeals. This may result in the direct appeal being assigned to a different panel than the panel to which the related application had been assigned.)*

## **V. What changes for you?**

A. Now a Notice of Appeal is filed with your clerk. In the future you may not know that the Application to Appeal has been filed until you receive the judgment of the Court of Appeals granting or denying the Application.

B. The appeal of your judgment now requires a written transcript of the TPR trial and the case record as prepared by the trial court clerk. In the future the Application for Appeal will not automatically require anything from the clerk.

*(The trial court clerk will not send anything to the Court of Appeals Court Clerk for an application, but the party may file parts of the record or transcripts as exhibits to the application. These are not required to be certified by the trial court clerk. If the application is granted and then the party files a Notice of Appeal, the trial court clerk will need to transmit the record and transcripts to the Court of Appeals as directed by the Notice of Appeal.)*

C. The appellate process could be complete after 30 days to file the Application for Appeal + 30 days for the COA to deny the application + 10 days for the remittitur to be issued.

*(As you stated, the case may end within a short period of 60 days. No remittitur is issued. On the other hand, a party may file a motion for reconsideration and/or an application for writ of certiorari to the Georgia Supreme Court which would continue the case for a longer period. )*

D. If the Application for Appeal is granted it could add that many days to the process of completing an appeal.