

Revised 4 (Em + Kevin)

6-26-06

THEME 5

FADE IN:

Superimposed is the title "How the Court of Appeals Works"

We see shots of various Georgia courthouses.

NARRATOR

Each year, over a million cases
are litigated in the state of
Georgia.

CAMERA SCROLLS DOWN a docket of cases listing plaintiffs
versus defendants.

NARRATOR

In each case, there must be a
winner (a beat) and a loser.

CUT TO footage of TV's Judge Judy deciding a case in favor
of one litigant.

Once again the CAMERA SCROLLS DOWN the docket of cases.

NARRATOR

It's not hard to imagine that
most folks on the losing side of
a case would like to appeal it.
So, of the over a million cases
heard each year in the state of
Georgia, why do less than 4,000
get appealed?

CUT TO an interview of someone answering question number 1.

OVER THE SHOULDER ANGLE of someone's hand holding a Notice
of Appeal. CAMERA APPROACHES an attractive counter clerk at
a trial court.

NARRATOR

Before a case can be heard by
the Court of Appeals, the
appellant - typically the losing
party - must file a Notice of
Appeal with the court where the
case was heard, commonly called

BLACKBURN (CONT.)

I just did one the other day where Charlie Mikell had written me a note about...at my request; I had told him I wasn't real comfortable with where I was, I asked him to take a real careful look and he did and sent me a memo back, which was very good, very thoughtful and very helpful. And so I amended my opinion based on the input that I received from him. So that's how one does it.

We see a photo of all 12 judges.

NARRATOR

If an opinion cannot be agreed upon, all 12 judges review the case. Also, if an opinion would reverse an existing precedent of the Court of Appeals, all 12 judges would participate.

Five of the judges in the photo partially fade, leaving seven regularly pixelated.

NARRATOR

such — Once seven or more judges agree on a decision, the case is considered decided and becomes a binding legal precedent.

One more judge fades out, leaving half of the judges regularly pixelated.

NARRATOR

If the decision is a split one six to six - the case is automatically referred to the Georgia Supreme Court.

drafts
NARRATOR

When this happens, the judge that disagrees ~~files~~ a Dissent (word is superimposed).

We see the hand of a judge pass the paperwork onto four more judges.

NARRATOR

When a judge writes a Dissent, a total of seven Court of Appeals judges are required to review the case. Their goal is to write an opinion agreeable to at least 4 of the 7 judges. Because this opinion can be used as a precedent in future cases, the Court of Appeals judges take special care in how they approach Dissents.

*that ultimately
gains 4 or more
votes*

CUT TO interview with Judge Blackburn. His name and title are superimposed.

BLACKBURN

And it would depend on the person, it would depend on the issue, how important it was. Sometimes, many times I would write just a memo instead of sitting down to discuss it, and the advantage to that is it gives the other person the opportunity to study your memo, think about it, look at the authorities you rely on, analyze the problem you raise, say with their position, without any threatening atmosphere or others having been persuaded to go that way. And more often than not probably what I would do, let's assume that it's the other person who has written something, I might write them a memo saying, "have you considered this?", and then just sort of make my points, and send it to them and then see what their response is, because we've had them many times,

consists of 12 judges, much of the work the judges do takes place within panels of three judges.

We see a courtroom in the Court of Appeals where there are only three chairs.

NARRATOR

When a request for an appeal comes to the Court, a case number is assigned and all attorneys of record are notified. A computer then assigns the case to one judge within a three-judge panel.

We see the hand of a judge grab the case's paperwork and turn the pages of information.

NARRATOR

The first judge drafts an opinion on the case, which explains how he or she would decide the case.

We see the hand of the judge pass the paperwork to the hand of another judge who turns the pages of information.

NARRATOR

The draft then goes to the other two judges on the panel, who determine whether they agree with the first judge's opinion. If they do, they sign and finalize the opinion, ending the case and creating a new and binding legal precedent.

We see the three chairs of the judges. Three green check marks are superimposed on the chairs.

NARRATOR

But sometimes the judges disagree.

Now one of the check marks fades and a red x is superimposed on it.

an appeal before the trial court judge has rendered his or her final decision. For instance, if a judge made a ruling ~~such as not allowing a piece of evidence to be admitted at trial~~ - and a litigant believed that ^{the} ruling was in error, the litigant would file an Interlocutory Application to attempt to have that decision reviewed on appeal.

on an issue that was not dispositive of the entire case, but nevertheless could be very significant to the final outcome,

CUT TO a PowerPoint type of graphic presentation which shows the previous information and the following information:

NARRATOR

There is one other way to have a case reviewed on appeal, and this is through filing an Emergency Motion (graphic shows this). Generally, after filing an appeal, it takes a number of days before the case goes before the judges on the Court. Sometimes, this can be too long a time period to wait for a ruling.

CUT TO interview with Clerk Bill Martin in which he gives an example of a recent Emergency Motion filed by a mother who wanted a change of custody. Interview not found, please advise.

We see the front of the Georgia Court of Appeals. CAMERA APPROACHES the front door.

NARRATOR

Now that we've explained the types of appeals that are made to the Court, let's see what happens once the judges accept the appeal.

The front door OPENS.

We see a photo of the 12 judges of the Court of Appeals.

NARRATOR

Although the Court of Appeals

NARRATOR

Before we take a look at how judges decide cases and render opinions, it's important to realize that the appeal we've just described - called a Direct Appeal - is what *usually* occurs.

We see the attractive clerk again behind the counter and wearing the same business clothes she had on earlier.

The same clerk MORPHS into a slightly punky wardrobe.

NARRATOR

But what happens when things aren't so (a beat) vanilla?

OVER THE SHOULDER ANGLE ON the losing litigant holding a Notice of Appeal. CAMERA APPROACHES the clerk.

CUT TO a PowerPoint type of graphic presentation which shows the following information:

NARRATOR

a direct — There are 12 types of cases in which litigants ~~do not~~ have a right to appeal. In these types of cases, the Court of Appeals must ~~permit~~ a case to proceed.
give its permission for

NARRATOR (CONT.)

When a litigant wants to appeal one of these types of cases, they file a Discretionary Application (graphic shows this). A panel of three judges from the Court of Appeals reviews the request, and it takes the OK of just one of those judges for the case to be heard. Another kind of request for an appeal is called an Interlocutory Application (graphic shows this).

ANGLE ON a judge's hand as he or she grabs a gavel. Another hand stops the judge's hand before the gavel is banged.

NARRATOR

An Interlocutory Application is

number one. The Court of Appeals hears, or disposes of so many cases we cannot hear oral argument in all cases. So we have to be selective, and one of the things that goes into my mind, or my thinking when I decide whether or not oral argument should be granted in a case, is this. I ask this question, "Why should the Court hear oral argument in this case? Can this case be disposed of without oral argument? What can the appellant tell me orally that he or she has not told me in his or her brief?" Generally I find that most oral arguments don't help in terms of deciding the issues. Sometimes they do but very seldom will a judge's mind be changed based on oral argument. It doesn't mean that we won't change our minds, because it does happen, but very very rarely.

RUFFIN (CONT.)

Sometimes something needs to be clarified that has not been clarified; sometimes it's a new expansion of an old rule, and you might want to hear argument on whether or not this should be expanded. But, generally I would not want oral argument completely eliminated because I think that, No. 1 it provides an opportunity for the citizens to see their court in action, it provides an opportunity for young lawyers to argue before a court that they probably would not otherwise get a chance to argue. So I wouldn't want to see it entirely eliminated, but we have to be selective in the kinds of cases we hear.

ANGLE ON the trial court we saw earlier.

brief. First, there is a Statement of the lower court proceedings, often called the Statement of the Case (graphic shows this). This section of the brief explains, essentially, why the case is being appealed. Next is the Enumeration of Errors (graphic shows this). This section specifically points out where at the trial court level the losing party believes an error was made. Finally, there is the Argument and Citation of Authorities (graphic shows this). This section is where the attorney makes a formal legal argument and tries to support his or her position with legal precedents - decisions made by judges in other, similar cases.

prior

NARRATOR (CONT.)

Often, attorneys believe they need to argue their case in front of the Court of Appeals judges face-to-face. So, the attorney may make a Request for Oral Argument, which, if approved, takes place in front of three of the 12 judges. In the Request for Oral Argument, the attorney explains why it is critical to have the case heard orally rather than on briefs alone. *the vote of*
It takes only one judge to grant a party's request to hold oral arguments.

Courts

CUT TO interview with Judge Ruffin. His name and title appear again.

INTERVIEWER

Explain your decision-making process when someone asks for the right to make an oral argument.

JUDGE RUFFIN

Well, there's no right to make an oral argument,

that case. Another instance of reversible error is the denial of counsel. And when that error comes up it's almost presumed that the appellant has been harmed unless the appellant himself or herself has done something which resulted in the error.

CUT TO the clerk doing paperwork.

NARRATOR

With the Notice of Appeal filed, it is now up to the trial court to organize the trial records, certify them and send them to the Court of Appeals.

INTERVIEW: Clerk explaining Notice of Appeals especially the Certificate of Serve.

CUT TO an ANGLE ON the door of a law firm. It OPENS.

ANGLE ON the clerk. She enters the law office and hands off documents to an attorney.

CUT TO the attorney looking through a law book.

NARRATOR

At this point, the attorneys get busy writing something called a brief. Although its name ~~sounds~~ *makes it sound* like a short and insignificant document, the brief is quite important, and ^{often} quite long. Legal briefs are what Court of Appeals judges will analyze to determine whether any legal error occurred in the trial court ^{that} ~~which~~ impacted that court's decision.

ANGLE ON the attorney sitting down at his computer and starting to work very seriously.

CUT TO a PowerPoint type of graphic presentation which shows the following information:

NARRATOR

There are three parts to every

the trial court.

We see the hand of the losing litigant give the form to the counter clerk.

CUT TO a PowerPoint type of graphic presentation which shows the following information:

lower court proceedings were
NARRATOR

The Notice of Appeal states where the ~~trial~~ was held (graphic shows "Location"), what the trial court judgement was (graphic shows "In favor of the defendant"), and at what part of the case the litigant believes a reversible error occurred (graphic shows "A Reversible Error").

CUT TO interview of Judge Ruffin. Superimposed is Ruffin's name and title.

RUFFIN

... let me tell you what a reversible error consists of. A reversible error consists of harm of an error and harm because a case will not be reversed simply because an error has been made. The appellant has to show that not only has an error been made, but that this error is harmful. Once that we determine that an error has been made and that it is harmful, then we will reverse a case.

RUFFIN (CONT.)

And to give you an example of what a reversible error, sometimes in the admission of evidence where the court has improperly admitted evidence and it turns out that this evidence, the lack of admission harmed the appellant, then we will reverse

We see the hand of a judge pass paperwork of the final opinion to the attractive clerk (once again dressed businesslike).

CUT TO the clerk walking back to her trial court. She goes inside.

NARRATOR

With an official opinion now rendered - either by the Court of Appeals or the Supreme Court, the trial court is given a Remittitur (word is superimposed) - ^a the document ^{that} ~~restates the judgement~~ ^{of the appellate court} and officially returns jurisdiction to the trial court.

ANGLE ON the clerk CLOCKING OUT her timecard and exiting the trial court. We see the doors of the trial court CLOSE.

FADE TO BLACK

From: Independent Creativity <info@ihadabeautifullife.com>
To: Bob McAteer <bobm@numail.org>, Bob McAteer <mca...
Date: 1/19/2006 2:39 am
Subject: Theme 5

Bob,

Here is Theme 5. After you read it, let's talk. It may at first seem like I went overboard, but I have ideas on how to do this in as easy a way as possible.

I highlighted a reference to the number of cases in Georgia. I figure you guys have some more accurate numbers you can plug in. Also, I highlighted something Bill Martin should look at. In fact, he should read the whole theme and let us know if it is factually correct. I'm sure he will see the theme as over-simplified, but I think we have to do it that way given our audience and timeline. As long as we don't produce something that has errors, I think we're fine.

Eric

P.S. I don't have the final version of Theme 1. Can you send me yours so I can make the correction?

Bill,

Can you take a look at this and tell me
what you think.

Bob

THEME 5

FADE IN:

Superimposed is the title "How the Court of Appeals Works"

We see shots of various Georgia courthouses.

NARRATOR

Each year, tens of thousands of cases are litigated in the state of Georgia.

ASK AOC

CAMERA SCROLLS DOWN a docket of cases listing plaintiffs versus defendants.

NARRATOR

In each case, there must be a winner (a beat) and a loser.

CUT TO footage of a TV's Judge Judy animatedly deciding a case in favor of one litigant.

Once again the CAMERA SCROLLS DOWN the docket of cases.

NARRATOR

Invariably, it would seem, those on the losing side of a case would like to have a new trial. So, of the tens of thousands of cases heard in the state of Georgia, why do only 3,000 or so get appealed?

-AOC

CUT TO an interview of someone answering question number 1.

OVER THE SHOULDER ANGLE of someone's hand holding a Notice of Appeal: CAMERA APPROACHES an attractive counter clerk at a trial court.

NARRATOR

Before a case can be heard by the Court of Appeals, the appellant - typically the losing litigant or his or her attorney - must file a Notice of Appeal with the court where the case was heard, commonly called the trial court.

We see the hand of the losing litigant give the form to the counter clerk.

CUT TO a PowerPoint type of graphic presentation which shows the following information:

NARRATOR

The Notice of Appeal states where the trial was held (graphic shows "Location"), what the trial court judgement was (graphic shows "In favor of the defendant"), and what part of the trial the litigant believes a reversible error occurred (graphic shows "A Reversible Error").

CUT TO an interview of a staffer or judge explaining what a reversible error is.

ANGLE ON the attractive clerk doing paperwork.

NARRATOR

With the Notice of Appeal filed, it is now up to the trial court to organize the trial records, certify them and send them on to the Court of Appeals. At the same time, the trial court verifies that the appealing litigant - formally called the appellant - has notified both the winning and losing attorneys that the case is being appealed.

CUT TO the attractive clerk walking toward an office building.

ANGLE ON the door of a law firm. It OPENS.

CUT TO the clerk enters the law office and hands off documents to an attorney.

CUT TO the attorney looking through a law book.

NARRATOR

At this point, the attorneys get busy writing something called a brief. Although its name sounds insignificant, it is what Court of Appeals judges will use to determine if, first, the case can be appealed and, finally, who should be the rightful winner and loser. In roughly 8 out of 10 cases, Court of Appeals judges will use only the brief, and not oral arguments, to make their ruling.

ANGLE ON the attorney sitting down at his computer and starting to work very seriously.

CUT TO a PowerPoint type of graphic presentation which shows the following information:

NARRATOR

There are three parts to every brief. First, there is a Statement of Cause (graphic shows this). The Statement of Cause explains in general why the case is being appealed. Next is the Enumeration of Errors (graphic shows this). This section specifically lists each part of the trial the losing party believes were in error. Finally, there is the Argument and Citation of Authority (graphic shows this). This section is where the attorney makes a formal legal argument and tries to back it up with precedents - examples of decisions made by judges in other cases.

Case (handwritten note pointing to "Statement of Cause")

enumeration or point out where in the trial (handwritten note pointing to "Enumeration of Errors")

was (unless ~~there~~ unless the subjective call) (handwritten note pointing to "lists each part of the trial")

were errors were committed (handwritten note pointing to "lists each part of the trial")

NARRATOR (CONT.)

Often, attorneys believe that they need to argue their case (5) in front of the Court of Appeals judges face-to-face. So, the attorney makes a Request for Oral Argument which, if approved, takes place in front of three of the 12 judges. In the Request for Oral Argument, the attorney explains why it is essential to have the case heard orally rather than on briefs alone. It takes only one judge to grant an approval to hear oral arguments.

CUT TO an interview of a judge answering question number 3.

ANGLE ON the trial court we saw earlier.

NARRATOR

Before we take a look at how judges decide cases and render opinions, it's important to realize that the appeal we've just described - called a Direct Appeal - is what usually occurs.

We see the attractive clerk again behind the counter and wearing the same business clothes she had on earlier.

The same clerk MORPHS into a slightly punky wardrobe.

NARRATOR

But what happens when things aren't so (a beat) vanilla?

OVER THE SHOULDER ANGLE ON the losing litigant holding a Notice of Appeal. CAMERA APPROACHES the clerk.

CUT TO a PowerPoint type of graphic presentation which shows the following information:

NARRATOR

There are 12 types of cases in which litigants do not have a right to appeal. Unless, the Court of Appeals says it's OK.

NARRATOR (CONT.)

When a litigant wants to appeal one of these types of cases, they file a Discretionary Application (graphic shows this). A panel of three judges from the Court of Appeals reviews the request, and it takes the OK of just one of those judges for the case to be heard. The third kind of request for an appeal is called, hold on tight, an Interlocutory Application (graphic shows this).

The litigant would request certiorari from the Supreme Court

ANGLE ON a judge's hand as he or she grabs a gavel. Another hand stops the judge's hand before the gavel is banged.

NARRATOR

An Interlocutory Application is an appeal before the trial court judge has rendered his or her decision. For instance, if a judge made a ruling - such as not allowing a piece of evidence into trial - and a litigant believed that ruling was in error, the litigant would file an Interlocutory Application.

Application must

CUT TO a PowerPoint type of graphic presentation which shows the previous information and the following information:

NARRATOR

There is one other way to appeal a case. It's called an Emergency Motion (graphic shows this). ~~It takes roughly 30 days after filing an appeal for a case to be heard by the Court of Appeals.~~ In some situations, this can be too long a time period to wait for a ruling.

CUT TO interview with Clerk Bill Martin in which he gives an example of a recent Emergency Motion filed by a mother who wanted a change of custody.

We see the front of the Georgia Court of Appeals. CAMERA APPROACHES the front door.

NARRATOR

Now that we've explained the types of appeals that are made to the Court, let's see what happens once the judges accept the appeal.

The front door OPENS.

We see a photo of the 12 judges of the Court of Appeals.

NARRATOR

Although the Court of Appeals consists of 12 judges, much of the work the judges do takes place within panels of three judges.

We see a courtroom in the Court of Appeals where there are only three chairs.

NARRATOR

When a request for an appeal comes to the Court, a computer assigns the case to one judge within a three-judge panel.

We see the hand of a judge grab the case's paperwork and turn the pages of information.

NARRATOR

The first judge drafts an opinion on the case, which explains how he or she would decide the case.

We see the hand of the judge pass the paperwork to the hand of another judge who turns the pages of information.

NARRATOR

The draft then goes to the other two judges who typically make revisions to the draft before formally agreeing with the first judge's decision.

We see the three chairs of the judges. Two green check marks are superimposed on two of the chairs. Then, a red x is superimposed on the third chair.

NARRATOR

Sometimes judges disagree.
When this happens, the judge
that disagrees files a Dissent
(word is superimposed).

We see the hand of a judge pass the paperwork onto four more judges.

NARRATOR

When a Dissent is filed, four
additional judges review the
case and try to write an
opinion all the judges can
accept.

CUT TO an interview with a judge answering question number 5.

We see a photo of all 12 judges.

NARRATOR

If an opinion cannot be agreed
upon, all 12 judges review the
case and make a decision that
affirms or reverses the trial
court judge's decision.

Five of the judges in the photo partially fade, leaving
seven regularly ~~pixelated~~ *def.*

NARRATOR

Once seven or more judges
agree on a verdict, the case
is considered decided.

One more judge fades out, leaving half of the judges
regularly ~~pixelated~~.

NARRATOR

If the decision is a split one
- six to six - the case is
referred to the Georgia
Supreme Court.

We see the hand of a judge pass paperwork of the final opinion to the attractive clerk (once again dressed businesslike).

CUT TO the clerk walking back to her trial court. She goes inside.

NARRATOR

With an official opinion now rendered - either by the Court of Appeals or the Supreme Court, the trial court is given a Remittitur (word is superimposed) - the document which tells the trial court whether its decision has been reversed or affirmed.

The doors of the trial court CLOSE.

FADE TO BLACK