

HOUSE SUBSTITUTE TO SENATE BILL 750

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 3 of Title 15 of the Official Code of 22  
 2 Georgia Annotated, relating to the Court of Appeals, so as 23  
 3 to increase the membership of the Court of Appeals; to 24  
 4 provide for the manner in which cases are heard; to provide 25  
 5 for the manner in which decisions can be overruled; to 26  
 6 specify what constitutes a quorum; to provide for election 27  
 7 and term of office; to amend Code Section 15-6-29 of the 28  
 8 Official Code of Georgia Annotated, relating to compensation 29  
 9 of superior court judges, so as to provide that when a new 30  
 10 judgeship is created, the new judge shall receive the same  
 11 local salary supplement paid to the incumbent judge or 31  
 12 judges of the circuit; to provide that no publication of a 32  
 13 notice of intention to introduce local legislation shall be 33  
 14 required for any bill creating one or more new judgeships;  
 15 to provide for related matters; to provide an effective 35  
 16 date; to repeal conflicting laws; and for other purposes. 36

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA: 39

18 SECTION 1. 41

19 Chapter 3 of Title 15 of the Official Code of Georgia 43  
 20 Annotated, relating to the Court of Appeals, is amended by 44  
 21 striking in its entirety Code Section 15-3-1, relating to 45  
 22 the composition and division of the Court of Appeals, and 46  
 23 inserting in lieu thereof a new Code Section 15-3-1 to read  
 24 as follows: 47

25 "15-3-1) 49

26 (a) Composition. The Court of Appeals shall consist of 51  
 27 nine ten Judges who shall elect one of their number as 53  
 28 Chief Judge, in such manner and for such time as may be 54  
 29 prescribed by rule or order of the court.

30 (b) Divisions. The court shall sit in three divisions 57  
 31 composed of three Judges in each division. Two Judges 58  
 32 shall constitute a quorum of a division. The assignment 59  
 33 of Judges to each division shall be made by the Chief  
 34 Judge, and the personnel of the divisions shall from time 60

1 to time be changed in accordance with rules prescribed by 61  
 2 the court. The Chief Judge shall designate the Presiding 62  
 3 Judges of the three divisions and shall, under rules 63  
 4 prescribed by the court, distribute the cases among the 64  
 5 divisions in such manner as to equalize their work as far 65  
 6 as practicable.

7 (c) How cases heard. 67

8 (1) Each division shall hear and determine, 69  
 9 independently of the others, the cases assigned to it, 70  
 10 except that ~~all-members-of-the--court;--sitting--as--one~~ 71  
 11 ~~court;--shall-pass-on-and-determine~~ the division next in  
 12 line in rotation and a seventh Judge shall participate 72  
 13 in the determination of each case in which there is a 74  
 14 dissent in the division to which the case was originally  
 15 assigned.

16 (2) In all cases which involve one or more questions 76  
 17 which, in the opinion of the majority of the Judges of 77  
 18 the division or of the two divisions plus a seventh 78  
 19 Judge to which a case is assigned, should be passed upon 79  
 20 by all the members of the court, ~~sitting-as-one-court;~~ 80  
 21 the questions may be presented to all the members of the  
 22 ~~court;--sitting-as-one-court;~~ and if a majority of all 81  
 23 the members of the court, ~~sitting-as-one-court;~~ decide 82  
 24 that the question or questions involved should, in their 83  
 25 judgment and discretion, be decided by all the members 84  
 26 of the court, ~~sitting-as-one-court;~~ the case shall be  
 27 passed upon by all the members of the court, ~~sitting--as~~ 86  
 28 ~~one--court;~~ provided that a majority of the Judges 87  
 29 passing upon the case concur in the judgment.

30 (3) In neither class of cases referred to in this 89  
 31 subsection shall there be oral argument except before 90  
 32 the division to which the cases are originally assigned. 91

33 (d) How decision of-division overruled. It being among the 94  
 34 purposes of this Code section to avoid and reconcile 95  
 35 conflicts among the decisions ~~of-the-three-divisions~~ made 96  
 36 by less than all of the Judges on the court and to secure 97  
 37 more authoritative decisions, it is provided that when the 98  
 38 two divisions plus a seventh Judge sit as one court 99  
 39 ~~composed-of-all-three-divisions~~ the court may, by the 100  
 40 concurrence of a majority, overrule any previous decision 101  
 41 ~~by-any-division-alone;~~ in the same manner as prescribed 102  
 42 for the Supreme Court. As precedent, a decision by such 103  
 entire court with a majority concurring shall take 104

1	precedence over a decision by any division <u>or two</u>	105
2	<u>divisions plus a seventh Judge.</u> A decision concurred in	106
3	by all the judges <u>Judges</u> shall not be overruled or	107
4	materially modified except with the concurrence of all the	108
5	judges <u>Judges</u> .	
6	(e) Quorum. When all the members of the court are sitting	110
7	together as one court, five <u>six</u> Judges shall be necessary	111
8	to constitute a quorum. In all cases decided by such court	113
9	as a whole by less than nine <u>ten</u> Judges, the concurrence	115
10	of at least five shall be essential to the rendition of a	116
11	judgment.	
12	(f) Oral arguments. The Court of Appeals may hear oral	118
13	arguments at places other than the seat of government.	119
14	Reasonable notice shall be given of such hearings.	120
15	(g) Assistance of other judges; procedure. Whenever the	122
16	court unanimously determines that the business of the	123
17	court requires the temporary assistance of an additional	124
18	judge or additional judges or one additional panel, the	125
19	court may request the assistance of senior appellate	
20	judges as provided in Chapter 3A of this title or senior	126
21	superior court judges as provided in Article 8 of Chapter	127
22	10 of Title 47. The judge <u>Judge</u> whose case assignment is	128
23	transferred to the additional judge shall not vote on the	129
24	case."	
25	<u>SECTION 2.</u>	132
26	Said chapter is further amended by striking in its entirety	134
27	Code Section 15-3-4, relating to the election and term of	135
28	office of Judges of the Court of Appeals, and inserting in	136
29	lieu thereof a new Code Section 15-3-4 to read as follows:	137
30	"15-3-4.	139
31	Two Judges of the Court of Appeals shall be elected at	141
32	each general state election to be held on Tuesday after	142
33	the first Monday in November of the even-numbered years in	143
34	the manner in which Justices of the Supreme Court are	144
35	elected; except that three Judges shall be elected at the	
36	general state election to be held in 1960 and thereafter	145
37	at each six-year interval, and that four Judges shall be	147
38	elected at the general state election to be held in 1962	148
39	and thereafter at each six-year interval, <u>and that one</u>	
40	<u>Judge appointed by the Governor on or after July 1, 1996,</u>	149
41	<u>shall serve until January 1, 1999, and an initial</u>	150
42	<u>successor to the Judge appointed by the Governor on or</u>	

1 after July 1, 1996, shall be duly elected and qualified at 151  
 2 the general state election to be held in 1998. Such 152  
 3 successor shall serve until January 1, 2001, and a 153  
 4 successor to that Judge shall be duly elected and 154  
 5 qualified at the general state election to be held in 155  
 6 2000. Thereafter, successors to such Judge shall be 156  
 7 elected and qualified at each six-year interval. The 157  
 8 terms of the Judges shall begin on January 1 following 158  
 9 their election and, except as provided above, shall 159  
 0 continue for six years and until their successors are 160  
 1 qualified. They shall be commissioned accordingly by the 161  
 2 Governor." 162

3 SECTION 3. 163

4 Code Section 15-6-29 of the Official Code of Georgia 165  
 5 Annotated, relating to compensation of superior court 166  
 6 judges, is amended by adding at its end a new subsection (c) 167  
 7 to read as follows:

8 "(c) When a new superior court judgeship is created by law 169  
 9 for any judicial circuit, the new superior court judge 170  
 0 shall upon taking office become entitled to and shall 171  
 1 receive from the county or counties comprising the circuit 172  
 2 the same county salary supplement, if any, then in effect 173  
 3 for the other judge or judges of the judicial circuit. 174  
 4 Such salary supplement for such new judge shall be 175  
 5 authorized by this subsection and no other legislation or 176  
 6 local legislation shall be required in order to authorize 177  
 7 such salary supplement, but nothing in this Code section 178  
 8 shall be construed to prohibit the enactment of local 179  
 9 legislation relating to such salary supplements. A 180  
 0 publication of notice of intention to introduce local 181  
 1 legislation as provided for in Code Section 28-1-14 shall 182  
 2 be required for any local legislation granting, changing 183  
 3 the amount of, or removing a salary supplement; but no 184  
 4 publication of notice of intention shall be required for a 185  
 5 bill creating one or more new superior court judgeships." 186

36 SECTION 4. 184

37 This Act shall become effective on July 1, 1996. 186

38 SECTION 5. 189

39 All laws and parts of laws in conflict with this Act are 191  
 40 repealed.

## RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts,  
§ 28.

## 15-3-3. Jurisdiction over certain crimes.

Pursuant to Article VI, Section V, Paragraph III of the Constitution of this state, the Court of Appeals shall have jurisdiction of the trial and correction of errors of law in cases involving the crimes of armed robbery, rape, and kidnapping wherein the death penalty has not been imposed. (Ga. L. 1977, p. 710, § 1; Ga. L. 1983, p. 3, § 50.)

## RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts,  
§ 28.

## 15-3-4. Election and term of office of Judges of Court of Appeals.

~~Two Judges of the Court of Appeals shall be elected at each general state election to be held on Tuesday after the first Monday in November of the even-numbered years in the manner in which Justices of the Supreme Court are elected; except that three Judges shall be elected at the general state election to be held in 1960 and thereafter at each six-year interval, and that four Judges shall be elected at the general state election to be held in 1962 and thereafter at each six-year interval. The terms of the Judges shall begin on January 1 following their election and shall continue for six years and until their successors are qualified. They shall be commissioned accordingly by the Governor. (Ga. L. 1916, p. 56, § 2; Code 1933, § 24-3502; Ga. L. 1960, p. 158, § 2; Ga. L. 1961, p. 140, § 2; Ga. L. 1985, p. 149, § 15.)~~

Cross references. — Election and term of office generally, Ga. Const. 1983, Art. VI, Sec. VII, Para. I and § 21-2-9.

Law reviews. — For article, "The Selection and Tenure of Judges," see 2 Ga. St. B.J. 281 (1966).

## 15-3-5. Oath of Judges; compensation.

(a) Before entering on the discharge of their duties, the Judges shall take the oath prescribed for judges of the superior courts, along with all other oaths required for civil officers.

(b) The annual salary of each Judge of the Court of Appeals shall be as specified in Code Section 45-7-4. The Judges shall also receive expenses and allowances as provided in Code Section 45-7-20. Such salary shall be paid in equal monthly installments.

(c) The salary provided for in subsection (b) of this Code section shall be the total compensation to be paid by the state to the officials named in

## RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, §§ 298-304.

SECTION IV.  
SUPERIOR COURTS

## Paragraph

I. Jurisdiction of superior courts.

**Paragraph I. Jurisdiction of superior courts.**

The superior courts shall have jurisdiction in all cases, except as otherwise provided in this Constitution. They shall have exclusive jurisdiction over trials in felony cases, except in the case of juvenile offenders as provided by law; in cases respecting title to land; in divorce cases; and in equity cases. The superior courts shall have such appellate jurisdiction, either alone or by circuit or district, as may be provided by law.

**1976 Constitution.** — Art. VI, Sec. IV, Paras. I, III, IV.

**Cross references.** — Appeal de novo from magistrate and probate courts to superior court, § 5-3-29. Superior courts, Ch. 6, T. 15. Jurisdiction and powers of superior courts, § 15-6-8. Equity cases, Ga. Const. 1983, Art. VI, Sec. I, Para. IV, and § 23-1-1. Juvenile cases, § 15-11-5. Divorce cases, see § 19-5-1. Cases involving title to land, § 44-2-60.

**Law reviews.** — For article, "Injunction Procedure in Georgia," see 13 Ga. B.J. 300 (1951). For article surveying development of equity and the right to trial by jury in

equity suits, and advocating use of jury to try issues of fact in equitable actions, see 8 Mercer L. Rev. 225 (1957). For article discussing the uneasy sharing of powers and responsibilities between the superior and juvenile courts in their concurrent jurisdiction over juveniles aged 13 to 18 and suggesting reforms, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B.J. 275 (1973).

For comment on *J.W.A. v. State*, 233 Ga. 683, 212 S.E.2d 849 (1975), appearing below, see 27 Mercer L. Rev. 335 (1975).

## JUDICIAL DECISIONS

## ANALYSIS

GENERAL CONSIDERATION  
DIVORCE

## RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, §§ 298-304.

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## JUDICIAL DECISIONS

## ANALYSIS

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DIVORCE

**Cross references.** — Court of Appeals generally, Ch. 3, T. 15.

**Law reviews.** — For article, "The Supreme Court of Georgia: An Account of Its Delayed Birth," see 6 Ga. B.J. 95 (1943). For article, "History of the Supreme Court of Georgia: The First Hundred Years," see

6 Ga. B.J. 177 (1944); 6 Ga. B.J. 269 (1944); 7 Ga. B.J. 8 (1944); 7 Ga. B.J. 101 (1944); 7 Ga. B.J. 277 (1945); 7 Ga. B.J. 393 (1945); 8 Ga. B.J. 5 (1945); 8 Ga. B.J. 117 (1945). For article, "The Establishment of the Georgia Supreme Court," see 9 Ga. St. B.J. 417 (1973).

### Paragraph I. Composition of Court of Appeals; Chief Judge.

The Court of Appeals shall consist of not less than nine Judges who shall elect from among themselves a Chief Judge.

1976 Constitution. — Art. VI, Sec. II, Para. VIII.

**Cross references.** — Court of Appeals generally, Ch. 3, T. 15.

### Paragraph II. Panels as prescribed.

The Court of Appeals may sit in panels of not less than three Judges as prescribed by law or, if none, by its rules.

1976 Constitution. — Art. VI, Sec. II, Para. VIII.

### Paragraph III. Jurisdiction of Court of Appeals; decisions binding.

The Court of Appeals shall be a court of review and shall exercise appellate and certiorari jurisdiction in all cases not reserved to the Supreme Court or conferred on other courts by law. The decisions of the Court of Appeals insofar as not in conflict with those of the Supreme Court shall bind all courts except the Supreme Court as precedents.

1976 Constitution. — Art. VI, Sec. II, Para. VIII.

**Cross references.** — Court of Appeals generally, Ch. 3, T. 15.

**Law reviews.** — For article, "Cities and Towns in Georgia: A Distinction With a Difference?" see 14 Mercer L. Rev. 385 (1963). For article, "The Selection and Tenure of Judges," see 2 Ga. St. B.J. 281 (1966). For article discussing the ineffi-

ciency of mandamus and impeachment as remedies for judicial inaction, see 5 Ga. St. B.J. 467 (1969).

For comment on *Bond v. Ray*, 207 Ga. 559, 63 S.E.2d 399 (1951), see 3 Mercer L. Rev. 220 (1951). For comment on *Atlantic C.L.R.R. v. Godard, executrix*, 211 Ga. 373, 86 S.E.2d 311 (1955), holding that where the Court of Appeals rules on all questions presented by the record except

no other tribunal to do so, and none can be legally constituted. *Wheeler v. Board of Trustees*, 200 Ga. 323, 37 S.E.2d 322 (1946)

Cited in *Boykin v. Hopkins*, 174 Ga. 511, 162 S.E. 796 (1932); *Ward v. Big Apple Supermarkets of Bolton Rd., Inc.*, 223 Ga. 756, 158 S.E.2d 396 (1967)

#### RESEARCH REFERENCES

*Am. Jur. 2d.* — 46 *Am. Jur. 2d, Judges*, §§ 86-236.

*C.J.S.* — 48 *C.J.S., Judges*, §§ 72-97.

#### Paragraph II. Exclusive appellate jurisdiction of Supreme Court.

The Supreme Court shall be a court of review and shall exercise exclusive appellate jurisdiction in the following cases:

- (1) All cases involving the construction of a treaty or of the Constitution of the State of Georgia or of the United States and all cases in which the constitutionality of a law, ordinance, or constitutional provision has been drawn in question; and
- (2) All cases of election contest.

1976 Constitution. — Art. VI, Sec. II.  
Para. IV.

#### Paragraph III. General appellate jurisdiction of Supreme Court.

Unless otherwise provided by law, the Supreme Court shall have appellate jurisdiction of the following classes of cases:

- (1) Cases involving title to land;
- (2) All equity cases;
- (3) All cases involving wills;
- (4) All habeas corpus cases;
- (5) All cases involving extraordinary remedies;
- (6) All divorce and alimony cases;
- (7) All cases certified to it by the Court of Appeals; and
- (8) All cases in which a sentence of death was imposed or could be imposed.

Review of all cases shall be as provided by law.

1976 Constitution. — Art. VI, Sec. II, Para. IV.

**Cross references.** — Jurisdiction and powers of Supreme Court generally, §§ 15-2-8, 15-2-9, and 15-3-3. Party's right to appeal, see §§ 5-6-34 and 5-6-35.

**Law reviews.** — For article, "Cities and Towns in Georgia: A Distinction With a Difference?" see 14 Mercer L. Rev. 385 (1963). For article, "The Appellate Procedure Act of 1965," (Art. 2, Ch. 6, T. 5) see 1 Ga. St. B.J. 451 (1965). For article discussing the inefficiency of mandamus

and impeachment as remedies for judicial inaction, see 5 Ga. St. B.J. 467 (1969).

For comment on *Bond v. Ray*, 207 Ga. 559, 63 S.E.2d 399 (1951), see 3 Mercer L. Rev. 220 (1951). For comment on *State v. Vaughn*, 207 Ga. 583, 63 S.E.2d 357 (1951), see 14 Ga. B.J. 72 (1951). For comment on *Tant v. State*, 123 Ga. App. 760, 182 S.E.2d 502 (1971), advocating additional reform of Georgia's system of appellate review of criminal cases, see 9 Ga. St. B.J. 490 (1973).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### RIGHT OF REVIEW

#### CORRECTION OF ERRORS OF FACT

#### TITLE TO LAND

1. IN GENERAL
2. PROCEEDINGS TO ESTABLISH COPY OF LOST DEED
3. CONDEMNATION
4. PARTITIONING PROCEEDINGS
5. PROCESSIONING AND BOUNDARY DISPUTES

#### EQUITY

1. IN GENERAL
2. TESTS FOR EQUITY JURISDICTION
3. WHERE EQUITABLE FEATURES ELIMINATED
4. DECLARATORY JUDGMENTS
5. INJUNCTIONS
6. EQUITABLE DEFENSES
7. RECEIVERSHIP
8. SPECIFIC CASES

#### WILLS

#### CRIMINAL CASES

#### CONTEMPT OF COURT

#### HABEAS CORPUS

#### EXTRAORDINARY REMEDIES

#### DIVORCE AND ALIMONY

#### OTHER CASES

#### PLEADING AND PRACTICE

1. IN GENERAL
2. NEED FOR DEFINITENESS

#### General Consideration

This paragraph is intended to vest in Supreme Court comprehensive power extending to the review of any decision pronounced by Court of Appeals. *State v. B'Gos*, 175 Ga. 627, 165 S.E. 566 (1932).

Court of Appeals has jurisdiction in all cases in which jurisdiction has not been conferred upon Supreme Court. *White v. State*, 196 Ga. 847, 27 S.E.2d 695 (1943).

Where a bill of exceptions presents no question over which the Supreme Court

## OPINIONS OF THE ATTORNEY GENERAL

Public Service Commission as defendant in superior court action for injunction has right to appeal to Supreme Court. 1967 Op. Att'y Gen. No. 67-40.

## RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 340.

ALR. — Jurisdiction of state court over divorce suit by resident of United States reservation, 46 ALR 993.

Validity of contract as affected by public policy as an independent question for the federal courts, or one as to which they are bound to follow the decisions of the state court, 57 ALR 435.

Jurisdiction of state courts of actions in relation to interstate shipments, 64 ALR 333.

Jurisdiction to order performance of positive acts in another state, 71 ALR 1351.

Right of federal courts in passing upon the validity or construction of state statute or constitutional provision, or rights and obligations accruing thereunder, to exercise their own judgment independent of

latest state court decisions thereon rendered subsequent to the accrual of the right in question, 97 ALR 515.

Propriety of certiorari to review decisions of public officer or board granting, denying, or revoking permit, certificate, or license required as condition of exercise of particular right or privilege, 102 ALR 534.

Power of court to prescribe rules of pleadings, practice, or procedure, 110 ALR 22; 158 ALR 705.

Superintending control over inferior tribunals, 112 ALR 1351.

Jurisdiction of state court over actions involving patents, 167 ALR 1114.

Adjudication of property rights of spouses in action for separate maintenance, support, or alimony without divorce, 74 ALR2d 31b.

#### Paragraph IV. Jurisdiction over questions of law from state or federal appellate courts.

The Supreme Court shall have jurisdiction to answer any question of law from any state or federal appellate court.

1976 Constitution. — Art. VI, Sec. II.  
Para. VII.

#### Paragraph V. Review of cases in Court of Appeals.

The Supreme Court may review by certiorari cases in the Court of Appeals which are of gravity or great public importance.

1976 Constitution. — Art. VI, Sec. II.  
Para. IV.

Cross references. — Writ of certiorari to Court of Appeals, § 5-6-15.

Code 1882, §§ 31, 240; Civil Code 1895, § 4314; Civil Code 1910, § 4838; Code 1933, § 24-2608.)

### JUDICIAL DECISIONS

Cited in Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964).

#### 15-6-8. Jurisdiction and powers of superior courts.

The superior courts have authority:

(1) To exercise original, exclusive, or concurrent jurisdiction, as the case may be, of all causes, both civil and criminal, granted to them by the Constitution and laws;

(2) To exercise the powers of a court of equity;

(3) To exercise appellate jurisdiction from judgments of the probate or magistrate courts as provided by law;

(4) To exercise a general supervision over all inferior tribunals and to review and correct, in the manner prescribed by law, the judgments of:

(A) Magistrates;

(B) Municipal courts or councils;

(C) Any inferior judicature;

(D) Any person exercising judicial powers; and

(E) Judges of the probate courts, except in cases touching the probate of wills and the granting of letters of administration, in which a jury must be impaneled;

(5) To punish contempt by fines not exceeding \$500.00 and by imprisonment not exceeding 20 days; and

(6) To exercise such other powers, not contrary to the Constitution, as are or may be given to such courts by law. (Laws 1799, Cobb's 1851 Digest, p. 1135; Code 1863, § 242; Code 1868, § 236; Code 1873, § 246; Code 1882, § 246; Civil Code 1895, § 4320; Penal Code 1895, § 791; Civil Code 1910, § 4849; Penal Code 1910, § 791; Code 1933, § 24-2615; Ga. L. 1982, p. 974, §§ 1, 2; Ga. L. 1983, p. 884, § 3-10; Ga. L. 1987, p. 3, § 15.)

**Cross references.** — Exercise of appellate jurisdiction by superior courts generally, § 5-3-1 et seq. Judicial dissolution of corporations, § 14-2-1430 et seq., § 14-3-1430 et seq. Exercise of contempt power generally, § 15-1-4. Requirement of availability of one judge in each circuit on primary or election days, § 21-2-412. Jurisdiction of superior

courts to hear cases pertaining to primary or election contests, § 21-2-523. Proceedings before superior courts regarding exercise of power of eminent domain generally, § 22-2-130 et seq. Jurisdiction of superior courts over questions regarding determination of legal heirs and their interests, § 53-4-30.

trial, the failure to appear shall be deemed to constitute a guilty plea and such cash bond shall be forfeited upon the call of the case for trial. It shall not be necessary for the county to take any further action to forfeit the cash bond. Forfeiture of a cash bond shall be deemed to constitute imposition and payment of a fine and shall be a bar to a subsequent prosecution of the accused for the violation. The court may, however, in any case enter an order pursuant to which bond forfeiture shall not be deemed to constitute imposition of a sentence and subsequent prosecution shall not be barred; and in any such case the amount of the bond forfeited shall be credited against any fine subsequently imposed.

(c) It shall be the duty of the clerk of magistrate court to furnish the officer or officers authorized under the order with a book of blank receipts consecutively numbered in triplicate and readily distinguishable and identifiable. The receipts shall be completed by the officers when accepting a cash bond so as to show the name of the person cited or arrested, the date of citation or arrest, nature of the offense, amount of cash bond given, and the name of the receiving officer. The receiving officer shall deliver a copy of the receipt to the person cited or arrested at the time the cash bond is given and shall file the original together with the cash bond with the clerk of the magistrate court not later than the next succeeding business day following the date of issuance of the receipt. (Code 1981, § 15-10-63.1, enacted by Ga. L. 1985, p. 417, § 1; Ga. L. 1987, p. 448, § 2.)

**15-10-64. Execution upon unpaid fines; sheriff to receive sentenced persons.**

(a) Execution may issue immediately upon any fine imposed by the court and not immediately paid.

(b) The sheriff of the county shall receive and house all persons sentenced to confinement for contempt or arrested or sentenced to confinement for violation of ordinances. (Code 1981, § 15-10-64, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 10; Ga. L. 1987, p. 448, § 2.)

✓ **15-10-65. Certiorari to superior court.**

Review of convictions shall be by certiorari to the superior court. (Code 1981, § 15-10-65, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1987, p. 448, § 2.)

**Editor's notes.** — Section 2 of Ga. L. 1987, p. 448, effective April 2, 1987, reenacted this Code section without change.

**Cross references.** — Local laws not in conflict with chapter to remain in effect, § 15-7-60.

### JUDICIAL DECISIONS

**Speedy trial provisions.** — As § 15-7-43(b), enacted in 1983, incorporates the speedy trial provisions of § 17-7-170 by reference, those provisions supersede a 1981 local law provision entitling a defendant in a state court to discharge and acquittal if no

trial is had at the term when the demand is made or within the next two succeeding regular terms thereafter. *Majia v. State*, 174 Ga. App. 432, 330 S.E.2d 171, aff'd, 254 Ga. 660, 333 S.E.2d 834 (1985).

#### 15-7-4. Jurisdiction.

Each state court shall have jurisdiction, within the territorial limits of the county or counties for which it was created and concurrent with the superior courts, over the following matters:

- (1) The trial of criminal cases below the grade of felony;
- (2) The trial of civil actions without regard to the amount in controversy, except those actions in which exclusive jurisdiction is vested in the superior courts;
- (3) The hearing of applications for and the issuance of arrest and search warrants;
- (4) The holding of courts of inquiry;
- (5) The punishment of contempts by fine not exceeding \$500.00 or by imprisonment not exceeding 20 days, or both; and
- (6) Review of decisions of other courts as may be provided by law. (Code 1981, § 15-7-4, enacted by Ga. L. 1983, p. 1419, § 2.)

**Cross references.** — Conflicts — state and federal courts, Uniform Superior Court Rules, Rule 17.

**Law reviews.** — For article, "The Civil Jurisdiction of State and Magistrate Courts," see 24 Ga. St. B.J. 29 (1987).

### JUDICIAL DECISIONS

**State court has jurisdiction over all misdemeanor violations** of Ch. 6, T. 40, dealing with traffic offenses. *Diamond v. State*, 151 Ga. App. 690, 261 S.E.2d 434 (1979).

**Superior courts retain exclusive jurisdiction as to declaratory judgment actions.** *EVI Equip., Inc. v. Northern Ins. Co.*, 178 Ga. App. 197, 342 S.E.2d 380 (1986), overruled on other grounds, *Mitchell v. Southern Gen. Ins. Co.*, 185 Ga. App. 870, 366 S.E.2d 179 (1988).

**Equitable remedies are beyond the juris-**

**diction of the state court.** *Forest Villas Condominium Ass'n v. Camerio*, 205 Ga. App. 617, 422 S.E.2d 884 (1992).

**No jurisdiction over § 16-8-18 offense.** — While § 16-8-18 (entering automobile with intent to commit theft) grants the trial judge discretion to impose misdemeanor punishment, this provision does not reduce the offense to a misdemeanor so as to give a state court jurisdiction. *Bass v. State*, 169 Ga. App. 520, 313 S.E.2d 776 (1984) (decided under former § 15-7-7).

## JUDICIAL DECISIONS

**Opening of default judgments.** — Code Section 9-11-55(a), a provision of the Civil Practice Act regarding the opening of default judgments, governs an application for year's support and caveat filed in probate court. *Greene v. Woodard*, 198 Ga. App. 427, 401 S.E.2d 617 (1991).

## ✓ 15-9-123. Appeal.

(a) Either party to a civil case in the probate court shall have the right of appeal to the Supreme Court or the Court of Appeals, as provided by Chapter 6 of Title 5.

(b) The general laws and rules of appellate practice and procedure which are applicable to cases appealed from the superior courts of this state shall be applicable to and govern appeals of civil cases from the probate courts. (Code 1981, § 15-9-123, enacted by Ga. L. 1986, p. 982, § 6.)

## JUDICIAL DECISIONS

**Claims filed after effective date.** — Although this article is effective for all cases filed on or after July 1, 1986, a petition filed prior to July 1, 1986, predated that date even though some of the claims were filed after that date; hence, jurisdiction of the appeal lay with the superior court, not the supreme court. *Porter v. Frazier*, 257 Ga. 614, 361 S.E.2d 825 (1987); *Walker v. Yarus*, 258 Ga. 346, 369 S.E.2d 32 (1988).

Cited in *Lawhorne v. Horace*, 188 Ga. App. 427, 373 S.E.2d 263 (1988); *Bosma v. Gunter*, 258 Ga. 664, 373 S.E.2d 368 (1988); *Beals v. Beals*, 203 Ga. App. 81, 416 S.E.2d 301 (1992).

## OPINIONS OF THE ATTORNEY GENERAL

**Appointment of emergency guardian pending appeal.** — Under § 29-5-11(d) the probate courts, which are authorized to hold jury trials under Ga. L. 1986, p. 982, will not be authorized to appoint an emergency guardian pending appeal. 1986 Op. Att'y Gen. No. U86-18.

Appeal of an order of emergency guardianship under § 29-5-11, which can be considered a "final order," will act as a supersedeas upon payment of the costs by the appellant. 1986 Op. Att'y Gen. No. U86-18.

## 15-9-124. Enforcement of judgments.

The general laws and rules applicable to the execution and enforcement of judgments in the superior courts of this state shall be applicable to and govern civil cases in the probate courts. (Code 1981, § 15-9-124, enacted by Ga. L. 1986, p. 982, § 6.)

## 15-9-125. Jurors.

All laws with reference to the number, composition, qualifications, impaneling, challenging, and compensation of jurors in superior courts

## ARTICLE 3

## CIVIL PROCEEDINGS

**15-10-40. Applicability of article.**

This article shall govern civil proceedings in the magistrate court. (Code 1981, § 15-10-40, enacted by Ga. L. 1983, p. 884, § 2-1.)

**Law reviews.** — For annual survey of trial practice and procedure, see 38 Mercer L. Rev. 383 (1986).

**✓ 15-10-41. No jury trials; appeal.**

(a) There shall be no jury trials in the magistrate court.

(b) (1) Except as otherwise provided in this subsection, appeals may be had from judgments returned in the magistrate court to the state court of the county or to the superior court of the county and the same provisions now provided for by general law for appeals contained in Article 2 of Chapter 3 of Title 5 shall be applicable to appeals from the magistrate court, the same to be a de novo appeal. The provisions of said Article 2 of Chapter 3 of Title 5 shall also apply to appeals to state court.

(2) No appeal shall lie from a default judgment. Review shall be by certiorari to the state court of that county or to the superior court of that county. (Code 1981, § 15-10-41, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 5; Ga. L. 1986, p. 701, § 2; Ga. L. 1987, p. 1009, § 1; Ga. L. 1993, p. 974, § 1.)

The 1993 amendment, effective April 13, 1993, in paragraph (2) of subsection (b), deleted "entered in the magistrate court, provided that the defaulting party may, upon payment of costs, reopen the case in the magistrate court at any time prior to the expiration of 15 days following the day of default. Any case so reopened shall stand immediately ready for trial. In the event that

a default is not opened within the requisite period of time," following "default judgment" in the first sentence and made minor stylistic changes.

**Law reviews.** — For article, "The Endangered Right of Jury Trials in Dispossessories," see 24 Ga. St. B.J. 126 (1988).

## JUDICIAL DECISIONS

**Constitutional right to jury trial in dispossessory actions.** — Where the appellants had sought a jury trial in a local magistrate court on the issue of possession in a landlord-tenant dispute, the appellee denied the appellants' request, the appellants filed a writ of prohibition against the appellee in the superior court, and the superior

court denied the appellants' writ and issued a certificate of immediate review to the Supreme Court of Georgia, the magistrate court did not err in denying the appellants a jury trial, since the right to jury trial on appeal is expressly given in § 5-3-30, and the appellants are not being denied a jury trial, but instead, only endure a procedural delay

**policymaker**". — A juvenile court judge pro tempore is a state official and, as such, could not be the "official policymaker" responsible for establishing an alleged unconstitu-

tional custom or policy on behalf of a county which was the defendant in a federal civil rights action. *Bendiburg v. Dempsey*, 692 F. Supp. 1354 (N.D. Ga. 1988).

#### OPINIONS OF THE ATTORNEY GENERAL

**Juvenile court judge pro tempore may be paid less.** — Since this section by its terms applies only to judges pro tempore, and § 15-11-10 does not provide a limit upon

salaries of juvenile court referees (now associate judges), a juvenile court judge may be paid less than a referee (now associate judge). 1981 Op. Att'y Gen. No. U81-20.

#### 15-11-64. Appeals; supersedeas.

In all cases of final judgments of a juvenile court judge, appeals shall be taken to the Court of Appeals or the Supreme Court in the same manner as appeals from the superior court. However, no such judgment or order shall be superseded except in the discretion of the judge; rather, the judgment or order of the court shall stand until reversed or modified by the reviewing court. (Ga. L. 1915, p. 35, § 17; Ga. L. 1916, p. 58, § 5; Code 1933, § 24-2417; Ga. L. 1935, p. 399, §§ 4, 7; Ga. L. 1950, p. 367, § 27; Ga. L. 1951, p. 291, § 30; Ga. L. 1956, p. 69, § 6; Ga. L. 1968, p. 1013, § 18; Code 1933, § 24A-3801, enacted by Ga. L. 1971, p. 709, § 1.)

**Law reviews.** — For article discussing due process in juvenile court procedures in California and Georgia, in light of *In re Gault*,

387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B.J. 9 (1971).

#### JUDICIAL DECISIONS

**Juvenile is granted same rights of appeal as are possessed by adults.** *J.J. v. State*, 135 Ga. App. 660, 218 S.E.2d 668 (1975).

**Construction of "court below".** — The term "the court below" is construed to be the court the judgment of which is sought to be appealed. *J.T.M. v. State*, 142 Ga. App. 635, 236 S.E.2d 764 (1977).

**"Final judgments" defined.** — This section provides for appeals "in all cases of final judgments of a juvenile court judge," without defining "final judgments," § 5-6-34 provides for appeals "[w]here the judgment is final — that is to say — where the cause is no longer pending in the court below." *J.T.M. v. State*, 142 Ga. App. 635, 236 S.E.2d 764 (1977).

**Transferral order is final and therefore appealable** since it operates to transfer the case to the superior court, after which the cause is no longer pending in "the court below," the juvenile court. *J.T.M. v. State*, 142 Ga. App. 635, 236 S.E.2d 764 (1977).

**Transfer of child custody case is continuation of that proceeding.** Thus, a transfer order in a habeas corpus-child custody proceeding is not final and hence is not appealable without a certificate of immediate review. *Fulton County Dep't of Family & Children Servs. v. Perkins*, 244 Ga. 237, 259 S.E.2d 427 (1978).

**Grant or denial of supersedeas.** — A juvenile court, unlike a superior court dealing with the same subject matter, has the discretion to grant or deny supersedeas even though the case in the juvenile court emanated from a superior court. *Elder v. Elder*, 184 Ga. App. 167, 361 S.E.2d 46 (1987).

**Order denying petition subject to review.** — An order denying the petition to vacate the order committing the juvenile is a judicial order, subject to judicial review as provided by this section. *Rossi v. Price*, 237 Ga. 651, 229 S.E.2d 429 (1976).

**Adjudication order alone is not final, appealable judgment.** — An adjudication order

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, §§ 26, 51-55, 61, 62.

C.J.S. — 21 C.J.S., Courts, §§ 5, 176, 225, 226, 229.

✓ 40-13-28. Appeal to superior court; bond.

Any defendant convicted under this article shall have the right of appeal to the superior court. The provisions of Code Sections 5-3-29 and 5-3-30 shall not apply to appeals under this Code section. Otherwise, the appeal shall be entered as appeals are entered from the probate court to the superior court, provided that the defendant shall be entitled to bail and shall be released from custody upon giving the bond as is provided for appearances in criminal cases in the courts of this state. Such bond shall have the same conditions as appearance bonds in criminal cases. The appeal to the superior court shall not be a de novo investigation before a jury but shall be on the record of the hearing as certified by the judge of that court who presided at the hearing below. (Ga. L. 1937-38, Ex. Sess., p. 558, § 10; Ga. L. 1986, p. 982, § 15.)

Cross references. — Appeals to superior courts generally, Ch. 3, T. 5.  
Editor's notes. — Ga. L. 1986, p. 982,

§ 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

JUDICIAL DECISIONS

Construction of section. — Language of this section cannot be read in isolation so as to support a right of direct appeal regardless of type of conviction but must instead be read in the context of the entire chapter, which deals only with the trial of traffic offenses committed on public roads. City of Adairsville v. Barton, 159 Ga. App. 810, 285 S.E.2d 581 (1981).

Scope of review. — In enacting this Code section, the General Assembly provided for a right of appeal "on the record" to the superior court. Thus, the mandate of the superior courts is to review asserted errors of law in the proceedings below under general appellate principles. The appellant may not raise issues not litigated in the court below, but he is entitled to a review of the record which ensures that the evidence has been received in conformity with statutory and constitutional standards and that it supports the conviction. Walton v. State, 261 Ga. 392, 405 S.E.2d 29, cert. denied, U.S. , 112 S. Ct. 587, 116 L. Ed. 2d 611 (1991).

This section applies only to probate courts

and municipal courts and does not have the broad scope to apply to appeals from recorder's court. Zornes v. State, 262 Ga. 757, 426 S.E.2d 355 (1993).

This section is procedural law. — Although this section certainly affects the assertion of substantive rights, it nonetheless falls within the category of procedural law, where the rule is that there are no vested rights in any course of procedure. Holloman v. State, 203 Ga. App. 476, 416 S.E.2d 839, cert. denied, 203 Ga. App. 906, 416 S.E.2d 839 (1992).

Appeals from superior court reviews made pursuant to this Code section are directly appealable under § 5-6-34(a). Wilson v. City of Riverdale, 203 Ga. App. 250, 416 S.E.2d 825 (1992).

The appeal to the superior court is not a "de novo proceeding". If the conviction is properly supported by the evidence, the conviction would stand; if not, an acquittal would be required. The superior court would not, however, make an independent finding of guilt or innocence based on the

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40-13-28. Appeal to superior court; bond.

40-14-4. Compliance  
certification

### JUDICIAL DECISIONS

#### Construction of section.

Construing § 5-6-35(a)(1) and this section according to their real intent and meaning and not so strictly as to defeat the legislative purpose, the General Assembly did not intend to remove traffic appeals under this section from the discretionary appeals procedures. *Brown v. City of Marietta*, 214 Ga. App. 840, 449 S.E.2d 540 (1994).

changed the scope of review in the superior court from a de novo investigation to a review of the record was not also intended to change the method of appeal from the superior court in such cases from discretionary appeals under § 5-6-35(a)(1) to direct appeals under § 5-6-34(a). *Brown v. City of Marietta*, 214 Ga. App. 840, 449 S.E.2d 540 (1994).

**Construction of 1986 amendment.** — The 1986 amendment to this section that

Administrative certification  
county police.

In accord with the

## CHAPTER 14

### USE OF RADAR SPEED DETECTION DEVICES

Sec.

40-14-3. Application for permit.

40-14-3. Application for permit.

(a) The governing authority of any county or municipality and the president of a college or university may apply to the Department of Public Safety for a permit to authorize the use of speed detection devices for purposes of traffic control within such counties, municipalities, colleges, or universities on streets, roads, and highways, provided the city, county, college, or university shall name the street or road on which the device is to be used and the speed limits on such street or road shall have been approved by the Office of Traffic Operations of the Department of Transportation.

(b) The Department of Public Safety is authorized to prescribe by appropriate rules and regulations the manner and procedure in which applications shall be made for such permits and to prescribe the required information to be submitted by the applicants. (Ga. L. 1968, p. 425, §§ 2, 4; Ga. L. 1970, p. 435, § 2; Ga. L. 1989, p. 586, § 1; Ga. L. 1995, p. 713, § 1.)

The 1995 amendment, effective April 18, 1995, substituted "Office of Traffic Operations" for "Division of Traffic Engineering and Safety" in subsection (a).

APPEAL AND ERROR

CHAPTER 3

APPEALS TO SUPERIOR COURT

Article 1		Article 2	
General Provisions		Procedure	
Sec.		Sec.	
5-3-1.	Right of appeal from county courts and justice of the peace courts [Repealed].	5-3-20.	Time for filing appeals.
5-3-2.	Right to appeal from probate courts; exception.	5-3-21.	Notice of appeal; form; service.
5-3-3.	Persons by whom appeal may be entered generally; attorney's authority to appeal to be in writing; dismissal for failure to file same; ratification of unauthorized appeal.	5-3-22.	Payment of costs prerequisite to appeal; affidavit of indigence; dismissal for nonpayment following court order; supersedeas bond.
5-3-4.	Appeal by one of several plaintiffs or defendants — Authorization and procedure generally.	5-3-23.	Signature on bond of attorney at law or in fact.
5-3-5.	Appeal by one of several plaintiffs or defendants — Effect of judgment on appeal generally; recovery of damages awarded upon appeal.	5-3-24.	Exemption of executors, administrators, and trustees from paying costs and giving bond.
5-3-6.	Appeal by one of several plaintiffs or defendants — Liability and recourse of surety on judgment on appeal.	5-3-25.	Appeal by partners or joint contractors; signature on bond; appeal by corporation.
5-3-7.	Appeal suspends judgment; effect of dismissal or withdrawal of appeal.	5-3-26.	Requirement of written defenses in appeal from justice of the peace court; right to amend pleadings [Repealed].
5-3-8.	Requirement of consent to withdrawal of appeal.	5-3-27.	Amendments to cure defects.
		5-3-28.	Transmittal of record and transcripts to superior court; issuance of orders and writs.
		5-3-29.	De novo investigation.
		5-3-30.	Term of trial in superior or state court; waiver of trial by jury.
		5-3-31.	Damages assessed for frivolous appeals.

**Cross references.** — See Ga. Const. 1983, Art. VI, Sec. IV, Para. I. As to procedure for appeals from decisions of superior court reviewing decisions of lower courts on appeal, see § 5-6-35. As to appeals to superior court from final action of Department of Banking and Finance, see § 7-1-90. As to description of extent of authority of superior court to exercise appellate jurisdiction and to exercise general supervision over all inferior tribunals, see § 15-6-8. As to appeal to superior court from decision of tribunal established to hear matters relating to construction or administration of school law, see § 20-2-1160. As to appeals to superior court

from decisions of registration officers denying right of voter registration, see §§ 21-2-224, 21-3-129. As to appeal to jury in superior court from decision of assessors in condemnation proceedings, see § 22-2-80 et seq. As to appeal to superior court from award of special master in condemnation proceeding, see § 22-2-112. As to right of appeal to superior court from convictions for traffic offenses, see § 40-13-28. As to appeal to superior court from decision of State Board of Equalization, see § 48-2-18. As to appeal to superior court from orders, rulings, or findings of state revenue commissioner, see § 48-2-59. As to appeal to supe-

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rior court from final decision by administrative agency in contested case, see § 50-13-19.

### JUDICIAL DECISIONS

**Chapter 11 of Title 9 does not deal with appellate court powers.** — Scope of Ch. 11, T. 9 is procedure in trial courts of record, and its rules do not deal with powers of appellate courts. *Buckhead Doctors' Bldg., Inc. v. Oxford Fin. Cos.*, 116 Ga. App. 503, 157 S.E.2d 767 (1967).

**Applicability.** — Appeals which may be taken to superior courts are limited by this chapter. *Walton County v. Scenic Hills Estates, Inc.*, 261 Ga. 94, 401 S.E.2d 513 (1991).

### RESEARCH REFERENCES

**ALR.** — Power of legislature to require appellate court to review evidence, 19 ALR 744; 24 ALR 1267; 33 ALR 10.

Amendment in appellate court increasing amount claimed beyond, or reducing amount claimed to, jurisdiction of court below, 168 ALR 641.

Defeated party's payment or satisfaction of, or other compliance with, civil judgment as barring his right to appeal, 39 ALR2d 153.

Appealability of state court's order granting or denying motion to disqualify attorney, 5 ALR4th 1251.

## ARTICLE 1

### GENERAL PROVISIONS

**Cross references.** — Right of appeal from cases in the justice of peace courts, Ga. Const. 1983, Art. VI, Sec. I, Para. V.

**Editor's notes.** — The following annota-

tions are to former Code Section 5-3-1, which was repealed by Ga. L. 1983, p. 884, § 4-2, effective July 1, 1983.

### JUDICIAL DECISIONS

#### ANALYSIS

#### GENERAL CONSIDERATION

#### APPLICABILITY

##### 1. IN GENERAL

##### 2. DISTINCTION BETWEEN APPEAL AND CERTIORARI

#### AMOUNT CLAIMED

#### JURISDICTION

#### PROCEDURAL ISSUES

#### General Consideration

Right to appeal to superior court is fixed by statute, and lies only from bodies or tribunals when appeal therefrom is provided by statute. *Georgia Power Co. v. Friar*, 47 Ga. App. 675, 171 S.E. 210 (1933), aff'd, 179 Ga. 470, 175 S.E. 807 (1934).

Where amount claimed is over \$50.00 section confers right to appeal to superior court. *Humphrey v. Johnson*, 13 Ga. App.

557, 79 S.E. 530 (1913).

Where amount in controversy is \$50.00 or less, appeal will not lie as matter of right. *Gay v. Brown*, 45 Ga. App. 862, 166 S.E. 374 (1932).

Under section, party may appeal to jury in superior court. *Hendrix & McBurney v. Mason*, 70 Ga. 523 (1883); *Southern Express Co. v. Hilton*, 94 Ga. 450, 20 S.E. 126 (1894); *Wood v. McCrary*, 107 Ga. 345, 33 S.E. 395 (1899).

## RESEARCH REFERENCES

ALR. — Payment of fine, serving sentence, or discharge on habeas corpus, as waiver of right to review conviction, 18 ALR 867; 74 ALR 638.

## 5-4-1. When certiorari shall lie; exception.

(a) The writ of certiorari shall lie for the correction of errors committed by any inferior judicatory or any person exercising judicial powers, including the judge of the probate court, except in cases touching the probate of wills, granting letters testamentary, and of administration.

(b) Notwithstanding subsection (a) of this Code section, the writ of certiorari shall not lie in civil cases in the probate courts which are provided for by Article 6 of Chapter 9 of Title 15. (Orig. Code 1863, § 3957; Code 1868, § 3977; Code 1873, § 4049; Code 1882, § 4049; Civil Code 1895, § 4634; Civil Code 1910, § 5180; Code 1933, § 19-101; Ga. L. 1986, p. 982, § 3.)

Editor's notes. — Ga. L. 1986, p. 982, § 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

Law reviews. — For annual survey on trial practice and procedure, see 38 Mercer L. Rev. 383 (1986).

## JUDICIAL DECISIONS

## ANALYSIS

GENERAL CONSIDERATION  
DECISIONS SUBJECT TO REVIEW BY CERTIORARI  
WHAT IS JUDICIAL ACTION

1. IN GENERAL
2. APPLICATION

## General Consideration

Editor's notes. — In light of the similarity of the provisions, decisions under former Code Section 5-4-4 are included in the annotations for this Code Section.

Section provides for review of decisions in exercise of judicial powers. — Certiorari under this section is a remedy whereby a litigant may have review of judgment or decision of inferior judicatory or a person exercising judicial powers. Richardson v. Rector, 134 Ga. App. 116, 213 S.E.2d 488 (1975).

Legislative intent behind provision. — It was intention of framers of Constitution, and of legislature, to provide writ of certiorari to superior courts to all persons dissatisfied with judgments of inferior judicatories and who desire to have those judgments cor-

rected by superior court. Cochran v. City of Rockmart, 242 Ga. 732, 251 S.E.2d 259 (1978).

Right of certiorari is a constitutional right. Wrenn v. Bowden, 56 Ga. App. 713, 193 S.E. 456 (1937).

Constitutional as well as a statutory remedy. The legislature has provided by general law the manner and means for carrying out Ga. Const. 1976, Art. VI, Sec. IV, Para. V (see Ga. Const. 1983, Art. VI, Sec. I, Para. IV). Cochran v. City of Rockmart, 242 Ga. 732, 251 S.E.2d 259 (1978).

Constitutional limitation on legislature's power to provide for superior court review. — The only power and authority given by Constitution to superior courts to correct errors in inferior courts, is by writ of certiorari. The legislature has no power to provide other means than those prescribed in the

**What Is Judicial Action (Cont'd)**  
**2. Application (Cont'd)**

certiorari therefrom under this section. McDonald v. Marshall, 185 Ga. 438, 195 S.E. 571 (1938).

**Ruling of city council upholding the suspension of police officer was judicatory act, and certiorari would lie to review the ruling.** Raughton v. Town of Fort Oglethorpe, 177 Ga. App. 171, 338 S.E.2d 754 (1985).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 4 Am. Jur. 2d, Appeal and Error, §§ 481, 483. 14 Am. Jur. 2d, Certiorari, §§ 1-4. 47 Am. Jur. 2d, Justices of the Peace, § 103.

**C.J.S.** — 14 C.J.S., Certiorari, §§ 6-25. 24 C.J.S., Criminal Law, § 1665 et seq. 51 C.J.S., Justices of the Peace, §§ 262-266.

**ALR.** — Payment of fine, serving sentence, or discharge on habeas corpus, as waiver of right to review conviction, 18 ALR 867; 74 ALR 638.

Propriety of certiorari to review decisions of tax boards, 77 ALR 1357.

Propriety of certiorari to review decisions of public officer or board granting, denying, or revoking permit, certificate, or license required as condition of exercise of particular right or privilege, 102 ALR 534.

Availability of remedies other than direct appeal from or error to federal court under provision of federal statute denying appeal or writ of error from decision remanding to state court case removed to federal court, 114 ALR 1476.

Ruling against defendant's attack upon indictment or information as subject to review by higher court, before trial, 133 ALR 934.

Legislature's express denial of right of appeal as affecting right to review on the merits by certiorari or mandamus, 174 ALR 194.

Right of prosecution to writ of certiorari in criminal case, 91 ALR2d 1095.

**5-4-2. Petition for certiorari to probate judge generally.**

When either party in any case in any probate court lodges objections to any proceeding or decision in the case, affecting the real merits of the case, the party making the same shall offer the objections in writing, which shall be signed by himself or his attorney and, if the same are overruled by the court, the party may petition the superior court for a writ of certiorari, in which petition he shall plainly, fully, and distinctly set forth the errors complained of. If the court deems the objections to be sufficient, it shall forthwith issue a writ of certiorari, directed to the judge of the probate court, requiring him to certify and send up to the superior court, at the time specified in the writ, all the proceedings in the case. (Laws 1799, Cobb's 1851 Digest, p. 523; Code 1863, § 3958; Code 1868, § 3978; Code 1873, § 4050; Code 1882, § 4050; Civil Code 1895, § 4635; Civil Code 1910, § 5181; Code 1933, § 19-201.)

**JUDICIAL DECISIONS**

**Section to be strictly construed.** — This section is construed strictly because it is in derogation of common law. Walden v. John D. Archbold Mem. Hosp., 197 Ga. App. 275, 398 S.E.2d 271 (1990).

**Certiorari lies only as to issues raised in trial court.** — Error which may be corrected by writ of certiorari is one made by tribunal whose judgment is being reviewed because of such error. Where it does not appear from

RESEARCH REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d, Appeal and Error, §§ 168-171, 364-373. C.J.S. — 17 C.J.S., Contempt, §§ 112-114, 121.

5-6-14. Execution of extraordinary orders of Supreme Court.

When judgments are rendered in the Supreme Court in injunction or other extraordinary cases, the judges of the superior courts may give immediate effect to such judgments. (Ga. L. 1870, p. 405, § 5; Code 1873, § 3215; Code 1882, § 3215; Civil Code 1895, § 5599; Civil Code 1910, § 6218; Code 1933, § 6-1806.)

Cross references. — Supersedeas, Rules of the Supreme Court of the State of Georgia, Rule 12.

JUDICIAL DECISIONS

Where injunction is denied, execution may proceed upon filing of remittitur in clerk's office below. Brown v. Wilson, 59 Ga. 604 (1877). Proceedings cannot be had until remittitur reversing judgment is filed in office of clerk below. Lyon v. Lyon, 103 Ga. 747, 30 S.E. 575 (1898).

Interlocutory hearing in injunction pro-

5-6-15. Certiorari from Supreme Court to Court of Appeals.

The writ of certiorari shall lie from the Supreme Court to the Court of Appeals as provided by Article VI, Section VI, Paragraph V of the Constitution of this state. (Orig. Code 1863, § 3957; Code 1868, § 3977; Code 1873, § 4049; Code 1882, § 4049; Civil Code 1895, § 4634; Civil Code 1910, § 5180; Code 1933, § 19-101; Ga. L. 1983, p. 3, § 47.)

Cross references. — Certiorari to the Court of Appeals, Rules of the Supreme Court of the State of Georgia, Rules 28 — 36. Applications, how made, Rules of the Court of Appeals of the State of Georgia, Rule 16.

JUDICIAL DECISIONS

Cited in Daniels v. Commissioners of Pilotage, 147 Ga. 295, 93 S.E. 887 (1917); McDonald v. Georgia Fed'n of Labor, 178 Ga. 313, 173 S.E. 662 (1933); Gullatt v. Slaton, 189 Ga. 758, 8 S.E.2d 47 (1940); Butler v. City of Dublin, 191 Ga. 551, 13 S.E.2d 362 (1941); Murdock v. Perkins, 219 Ga. 756, 135 S.E.2d 869 (1964); Manning v. A.A.B. Corp., 223 Ga. 111, 153 S.E.2d 561 (1967); Sonesta Int'l Hotels Corp. v. Colony Square Co., 482 F.2d 281 (5th Cir. 1973); McClung v. Richardson, 232 Ga. 530, 207 S.E.2d 472 (1974); Shantha v. Municipal Court, 240 Ga. 280, 240 S.E.2d 32 (1977); Housworth v. Glisson, 485 F. Supp. 29 (N.D. Ga. 1978); Mulling v. Wilson, 245 Ga. 773, 267 S.E.2d 212 (1980); Board of Trustees v. Christy, 154 Ga. App. 488, 269 S.E.2d 33 (1980); City of Adairsville v. Barton, 159 Ga. App. 810, 285 S.E.2d 581 (1981).

estates as subject to consideration on appeal though not raised below, 11 ALR2d 317.

Appealability of order granting or denying right of intervention, 15 ALR2d 336.

Appealability of order pertaining to pre-trial examination, discovery, interrogatories, production of books and papers, or the like, 37 ALR2d 586.

Reviewability, on appeal from final judgment, of interlocutory order, as affected by fact that order was separately appealable, 79 ALR2d 1352.

Inattention of juror from sleepiness or

other cause as ground for reversal or new trial, 88 ALR2d 1275.

Judgment subject to appeal as entitled to full faith and credit, 2 ALR3d 1384.

Validity and effect of criminal defendant's express waiver of right to appeal as part of negotiated plea agreement, 89 ALR3d 864.

Appeal by state of order granting new trial in criminal case, 95 ALR3d 596.

Right of municipal corporation to review of unfavorable decision in action or prosecution for violation of ordinance — modern status, 11 ALR4th 399.

**5-6-34. Judgments and rulings deemed directly appealable; procedure for review of judgments, orders, or decisions not subject to direct appeal; scope of review; hearings in criminal cases involving a capital offense for which death penalty is sought.**

(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the following judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state:

- (1) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;
- (2) All judgments involving applications for discharge in bail trover and contempt cases;
- (3) All judgments or orders directing that an accounting be had;
- (4) All judgments or orders granting or refusing applications for receivers or for interlocutory or final injunctions;
- (5) All judgments or orders granting or refusing applications for attachment against fraudulent debtors;
- (6) All judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders;
- (7) All judgments or orders refusing applications for dissolution of corporations created by the superior courts; and
- (8) All judgments or orders sustaining motions to dismiss a caveat to the probate of a will.

(b) Where the trial judge in rendering an order, decision, or judgment, not otherwise subject to direct appeal, certifies within ten days of entry thereof that the order, decision, or judgment is of such importance to the case that immediate review should be had, the Supreme Court or the Court of Appeals may thereupon, in their respective discretions, permit an appeal

to be taken from the order, decision, or judgment if application is made thereto within ten days after such certificate is granted. The application shall be in the nature of a petition and shall set forth the need for such an appeal and the issue or issues involved therein. The applicant may, at his or her election, include copies of such parts of the record as he or she deems appropriate, but no certification of such copies by the clerk of the trial court shall be necessary. The application shall be filed with the clerk of the Supreme Court or the Court of Appeals and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties in the case in the manner prescribed by Code Section 5-6-32, except that such service shall be perfected at or before the filing of the application. The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed. Within ten days after an order is issued granting the appeal, the applicant, to secure a review of the issues, may file a notice of appeal as provided in Code Section 5-6-37. The notice of appeal shall act as a supersedeas as provided in Code Section 5-6-46 and the procedure thereafter shall be the same as in an appeal from a final judgment.

(c) In criminal cases involving a capital offense for which the death penalty is sought, a hearing shall be held as provided in Code Section 17-10-35.2 to determine if there shall be a review of pretrial proceedings by the Supreme Court prior to a trial before a jury. Review of pretrial proceedings, if ordered by the trial court, shall be exclusively as provided by Code Section 17-10-35.1 and no certificate of immediate review shall be necessary.

(d) Where an appeal is taken under any provision of subsection (a), (b), or (c) of this Code section, all judgments, rulings, or orders rendered in the case which are raised on appeal and which may affect the proceedings below shall be reviewed and determined by the appellate court, without regard to the appealability of the judgment, ruling, or order standing alone and without regard to whether the judgment, ruling, or order appealed from was final or was appealable by some other express provision of law contained in this Code section, or elsewhere. For purposes of review by the appellate court, one or more judgments, rulings, or orders by the trial court held to be erroneous on appeal shall not be deemed to have rendered all subsequent proceedings nugatory; but the appellate court shall in all cases review all judgments, rulings, or orders raised on appeal which may affect the proceedings below and which were rendered subsequent to the first judgment, ruling, or order held erroneous. Nothing in this subsection shall require the appellate court to pass upon questions which are rendered moot. (Orig. Code 1863, § 4159; Code 1868, § 4191; Code 1873, § 4250;

Right of municipal corporation to review of unfavorable decision in action or prosecution for violation of ordinance — modern status, 11 ALR4th 399.

intracorporate deadlock or dissension, 34 ALR4th 13.

Appealability of order suspending imposition or execution of sentence, 51 ALR4th 939.

Relief other than by dissolution in cases of

**5-6-35. Cases requiring application for appeal; contents, filing, and service of application; exhibits; response by opposing party; issuance of appellate court order regarding appeal; procedure; supersedeas.**

(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.

(b) All appeals taken in cases specified in subsection (a) of this Code section shall be by application in the nature of a petition enumerating the errors to be urged on appeal and stating why the appellate court has jurisdiction. The application shall specify the order or judgment being appealed and, if the order or judgment is interlocutory, the application shall set forth, in addition to the enumeration of errors to be urged, the need for interlocutory appellate review.

(c) The applicant shall include as exhibits to the petition a copy of the order or judgment being appealed and should include a copy of the petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion. An applicant may include copies of such other parts of the record or transcript as he deems appropriate. No certification of such copies by the clerk of the trial court shall be necessary in conjunction with the application.

(d) The application shall be filed with the clerk of the Supreme Court or the Court of Appeals within 30 days of the entry of the order, decision, or judgment complained of and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties as provided by law, except that the service shall be perfected at or before the filing of the application. When a motion for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the application shall be filed within 30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion.

(e) The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The response may point out that the decision of the trial court was not error, or that the enumeration of error cannot be considered on appeal for lack of a transcript of evidence or for other reasons.

(f) The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed.

(g) Within ten days after an order is issued granting the appeal, the applicant, to secure a review of the issues, shall file a notice of appeal as provided by law. The procedure thereafter shall be the same as in other appeals.

(h) The filing of an application for appeal shall act as a supersedeas to the extent that a notice of appeal acts as supersedeas.

(i) This Code section shall not affect Code Section 9-14-52, relating to practice as to appeals in certain habeas corpus cases. (Ga. L. 1979, p. 619, §§ 3, 6; Ga. L. 1982, p. 3, § 5; Ga. L. 1984, p. 22, § 5; Ga. L. 1984, p. 599, § 2; Ga. L. 1986, p. 1591, § 2; Ga. L. 1988, p. 1357, § 1; Ga. L. 1991, p. 412, § 1; Ga. L. 1994, p. 347, § 2.)

The 1994 amendment, effective July 1, 1994, in subsection (f), substituted "30 days" for "15 days" and deleted "response of the opposing party or parties is filed with the court or, in the event that no response is filed, within 25 days of the date on which the" preceding "application was filed".

**Cross references.** — Petitions for alimony or child support when no divorce is pending, §§ 19-6-10, 19-6-11. Filings in clerk's office, Rules of the Supreme Court of the State of Georgia, Rule 1. Application for leave to appeal final judgment, Rules of the Supreme Court of the State of Georgia, Rule 25. Leave to appeal interlocutory order, Rules of the Court of Appeals of the State of Georgia, Rule 29.

**Editor's notes.** — Ga. L. 1986, p. 1591, § 3, not codified by the General Assembly, provided that that Act applies to actions filed or presented for filing on or after July 1, 1986, and to any action pending on July 1, 1986, with respect to any claim, defense, or other position which is first raised in the action on or after July 1, 1986.

**Law reviews.** — For article surveying appellate practice and procedure, see 34 Mercer L. Rev. 3 (1982). For survey article on domestic relations, see 34 Mercer L. Rev. 113 (1982). For annual survey of domestic relations law, see 35 Mercer L. Rev. 127 (1983). For article surveying recent developments in

administrative law, see 37 Mercer L. Rev. 503 (1985). For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For annual survey of appellate practice and procedure, see 38 Mercer L. Rev. 47 (1986). For annual survey of criminal law, see 38 Mercer L. Rev. 129 (1986). For annual survey of law of domestic relations, see 38 Mercer L. Rev. 179 (1986). For article, "Battling the Many-Headed Hydra: Abusive Litigation Law in Georgia," see 25 Ga. St. B.J. 65 (1988). For article, "Intangible Tax Appeals After Blank v. Collins; The Uncertainty Continues," see 27 Ga. St. B.J. 78 (1990). For annual survey on law of domestic relations, see 42 Mercer L. Rev. 201 (1990). For article, "Let's Revise Appellate Procedure in Georgia," see 27 Ga. St. B.J. 135 (1991). For article, "Getting Certiorari Granted", 28 Ga. St. B.J. 90 (1991). For annual survey of appellate practice and procedure, see 43 Mercer L. Rev. 73 (1991). For annual survey of domestic relations, see 43 Mercer L. Rev. 243 (1991). For article, "Appeals, Interlocutory and Discretionary Applications, and Post-Judgment Motions in the Georgia Courts: The Current Practice and the Need for Reform Legislation," see 44 Mercer L. Rev. 17 (1992).

For note, "Restrictions on the Right to Direct Appeal under Georgia's Appellate Practice Act," see 21 Ga. St. B.J. 43 (1984).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION APPLICATION

1. IN GENERAL
2. JUDGMENTS CONCERNING CHILD CUSTODY
3. DIVORCE
4. GARNISHMENT
5. REVOCATION OF PROBATION
6. DAMAGES WHERE JUDGMENT IS \$10,000.00 OR LESS
7. APPEALS UNDER § 9-11-60
8. ATTORNEY'S FEES OR EXPENSES
9. ZONING CASES

Right of municipal corporation to review of unfavorable decision in action or prosecution for violation of ordinance — modern status, 11 ALR4th 399.

intracorporate deadlock or dissension, 34 ALR4th 13.

Relief other than by dissolution in cases of Appealability of order suspending imposition or execution of sentence, 51 ALR4th 939.

**5-6-35. Cases requiring application for appeal; contents, filing, and service of application; exhibits; response by opposing party; issuance of appellate court order regarding appeal; procedure; supersedeas.**

(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.

(b) All appeals taken in cases specified in subsection (a) of this Code section shall be by application in the nature of a petition enumerating the errors to be urged on appeal and stating why the appellate court has jurisdiction. The application shall specify the order or judgment being appealed and, if the order or judgment is interlocutory, the application shall set forth, in addition to the enumeration of errors to be urged, the need for interlocutory appellate review.

(c) The applicant shall include as exhibits to the petition a copy of the order or judgment being appealed and should include a copy of the petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion. An applicant may include copies of such other parts of the record or transcript as he deems appropriate. No certification of such copies by the clerk of the trial court shall be necessary in conjunction with the application.

(d) The application shall be filed with the clerk of the Supreme Court or the Court of Appeals within 30 days of the entry of the order, decision, or judgment complained of and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties as provided by law, except that the service shall be perfected at or before the filing of the application. When a motion for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the application shall be filed within 30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion.

(e) The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The response may point out that the decision of the trial court was not error, or that the enumeration of error cannot be considered on appeal for lack of a transcript of evidence or for other reasons.

(f) The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed.

(g) Within ten days after an order is issued granting the appeal, the applicant, to secure a review of the issues, shall file a notice of appeal as provided by law. The procedure thereafter shall be the same as in other appeals.

(h) The filing of an application for appeal shall act as a supersedeas to the extent that a notice of appeal acts as supersedeas.

delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party may be adjudged guilty of contempt.

→ (h) *Appeal*. An order granting summary judgment on any issue or as to any party shall be subject to review by appeal. An order denying summary judgment shall be subject to review by direct appeal in accordance with subsection (b) of Code Section 5-6-34. (Ga. L. 1966, p. 609, § 56; Ga. L. 1967, p. 226, § 25; Ga. L. 1975, p. 757, § 3.)

**Cross references.** — Motions in civil actions, Uniform Superior Court Rules, Rule 6. Reply, Uniform State Court Rules, Rule 6.2. Motions for summary judgment in probate court proceedings, Uniform Rules for the Probate Courts, Rules 6.5 and 6.6.

**U.S. Code.** — For provisions of Federal Rules of Civil Procedure, Rule 56, see 28 U.S.C.

**Law reviews.** — For article discussing effective use of motions for summary judgment prior to adoption of this section, see 23 Ga. B.J. 439 (1961). For article summarizing summary judgment in this state, see 27 Mercer L. Rev. 285 (1975). For article discussing interplay of the Appellate Practice Act (Art. 2, Ch. 6, T. 5), § 9-11-54(b), and subsection (h) of this section, see 31 Mercer L. Rev. 1 (1979). For survey of Georgia trial practice and procedure from June 1979 through May 1980, see 32 Mercer L. Rev. 225 (1980). For survey of Georgia trial practice and procedure from mid-1980 through mid-1981,

see 33 Mercer L. Rev. 275 (1981). For article discussing expert testimony and summary judgment motions in medical malpractice actions, see 18 Ga. St. B.J. 44 (1981). For survey of Georgia trial practice and procedure from mid-1981 through mid-1982, see 34 Mercer L. Rev. 299 (1982). For annual survey of law of torts, see 38 Mercer L. Rev. 351 (1986).

For case comment, "Yost v. Torok and Abusive Litigation: A New Tort to Solve an Old Problem," see 21 Ga. L. Rev. 429 (1986).

For note, "Summary Judgment in Medical Malpractice Actions," see 7 Ga. St. B.J. 470 (1971). For case note, "Lynch v. Waters: Tolling Georgia's Statute of Limitations for Medical Malpractice," see 38 Mercer L. Rev. 1493 (1987).

For comment, "Overruling Tradition: Summary Judgment in the Eleventh Circuit After 1986," see 41 Mercer L. Rev. 737 (1990).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### PURPOSE OF SUMMARY JUDGMENT

#### APPLICABILITY TO CERTAIN ACTIONS, PROCEEDINGS, ISSUES, AND DEFENSES

#### PROPRIETY OF SUMMARY JUDGMENT

#### BURDENS ON MOTION FOR SUMMARY JUDGMENT

##### 1. IN GENERAL

##### 2. BURDEN ON MOVANT GENERALLY

##### 3. BURDEN ON NONMOVANT

##### 4. BURDENS WHEN DEFENDANT IS MOVANT

#### EVIDENCE ON MOTION

##### 1. IN GENERAL

##### 2. ADMISSIBILITY OF EVIDENCE

##### 3. PLEADINGS

##### 4. CONCLUSORY STATEMENTS

Query: GACODE:|gac artvi-vi-ii|

Paragraph II. Exclusive appellate jurisdiction of Supreme Court.

The Supreme Court shall be a court of review and shall exercise exclusive appellate jurisdiction in the following cases:

~~(1)~~ All cases involving the construction of a treaty or of the Constitution of the State of Georgia or of the United States and all cases in which the constitutionality of a law, ordinance, or constitutional provision has been drawn in question; and

(2) All cases of election contest.

1976 Constitution. - Art. VI, Sec. II, Para. IV.

Law reviews. - For comment, "Judicial Review of Zoning Ordinances in Georgia: The Court's Role in Land Use Planning," see 41 Mercer L. Rev. 1469 (1990).

## JUDICIAL DECISIONS

### ANALYSIS

General Consideration  
Divorce and Alimony

### General Consideration

Exclusive jurisdiction where constitutionality of law or ordinance in question. - Georgia Supreme Court has exclusive appellate jurisdiction of cases in which the constitutionality of a law or ordinance is in question without regard to the court from which the appeal is taken. *Kariuki v. DeKalb County*, 253 Ga. 713, 324 S.E.2d 450 (1985).

The Court of Appeals has no authority to determine the constitutionality of a state statute. *Burson v. State*, 183 Ga. App. 647, 359 S.E.2d 731, cert. denied, 183 Ga. App. 905, 359 S.E.2d 731 (1987).

Constitutional issue required. - The Supreme Court did not have jurisdiction over a discretionary appeal of a superior court order, based on a question as to the constitutionality of a statute, where the trial court had not specifically passed upon the issue of constitutionality. *Marr v. Georgia Dep't of Educ.*, 264 Ga. 841, 452 S.E.2d 112 (1995).

Direct appeal of administrative agency decision. - This Paragraph does not permit the direct appeal of an administrative agency decision just because the constitutionality of an ordinance is drawn into question. Section 5-6-35(a)(1) requires the filing of an application for an appeal. *City of Atlanta Bd. of Zoning Adjustment v. Midtown N., Ltd.*, 257 Ga. 496, 360 S.E.2d 569 (1987).

Direct appeal not available from recorder's court. - A direct appeal from the recorder's court to the Supreme Court was not available in a case challenging the constitutionality of an ordinance. Instead, the proper method of review was by certiorari to the superior court. *Russell v. City of East Point*, 261 Ga. 213, 403 S.E.2d 50, cert. denied, 502 U.S. 971, 112 S. Ct. 448, 116 L. Ed. 2d 466 (1991).

Cases involving revenues of the state. - The enactment of the 1983 Constitution superseded the Supreme Court's order in *Collins v. State*, 239 Ga. 400, 236 S.E.2d 759 (1977), assuming jurisdiction over cases involving revenues of the state, thus, all pending cases which involve revenues of the state and which have been docketed in the Supreme Court will be transferred to the Court of Appeals. *Collins v. AT & T Co.*, 265 Ga. 37, 456 S.E.2d 50 (1995).

Cited in *Andrews v. State*, 175 Ga. App. 22, 332 S.E.2d 299 (1985); *Liles v. Still*, 176 Ga. App. 65, 335 S.E.2d 168 (1985); *In re W.M.F.*, 180 Ga. App. 397, 349 S.E.2d 265 (1986); *In re C.D.B.*, 182 Ga. App. 263, 355 S.E.2d 759 (1987); *Rybert & Co. v. City of Atlanta*, 258 Ga. 347, 368 S.E.2d 739 (1988); *Kolker v. State*, 260 Ga. 240, 391 S.E.2d 391 (1990); *Noland v. State*, 202 Ga. App. 125, 413 S.E.2d 509 (1991); *Forsyth County v. Greer*, 211 Ga. App. 444, 439 S.E.2d 679 (1993); *Board of Tax Assessors v. Tom's Foods, Inc.*, 264 Ga. 309, 444 S.E.2d 771 (1994); *Smith v. State*, 214 Ga. App. 631, 448 S.E.2d 906 (1994); *Ryals v. State*, 215 Ga. App. 51, 449 S.E.2d 865 (1994); *Kelly v. City of Atlanta*, 217 Ga. App. 365, 457 S.E.2d 675 (1995).

#### Divorce and Alimony

Jurisdiction of appeal from denial of equitable defense to alimony enforcement. - Where an appeal arises from the trial court's judgment against a husband on his affidavit of illegality filed in response to his wife's fieri facias issued on the alimony provisions of their divorce decree, where the appellant is seeking to have the superior court set aside the fieri facias on equitable grounds because of his former wife's apparent abandonment of their children over which she was charged with custody pursuant to the decree, this appeal is from a judgment rendered pursuant to a request for equitable relief, which places the appeal within the Supreme Court's jurisdiction. *Iannicelli v. Iannicelli*, 169 Ga. App. 155, 311 S.E.2d 850 (1983).

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Paragraph III. General appellate jurisdiction of Supreme Court.

Unless otherwise provided by law, the Supreme Court shall have appellate jurisdiction of the following classes of cases:

- (1) Cases involving title to land;
- (2) All equity cases;
- (3) All cases involving wills;
- (4) All habeas corpus cases;
- (5) All cases involving extraordinary remedies;
- (6) All divorce and alimony cases;
- (7) All cases certified to it by the Court of Appeals; and
- (8) All cases in which a sentence of death was imposed or could be imposed.

Review of all cases shall be as provided by law.

1976 Constitution. - Art. VI, Sec. II, Para. IV.

Cross references. - Jurisdiction and powers of Supreme Court generally, §§ 15-2-8, 15-2-9, and 15-3-3.

Party's right to appeal, see §§ 5-6-34 and 5-6-35.

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5-6-34. Judgments and rulings deemed directly appealable; procedure for review of judgments, orders, or decisions not subject to direct appeal; scope of review; hearings in criminal cases involving a capital offense for which death penalty is sought.

(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the following judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state:

(1) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;

(2) All judgments involving applications for discharge in bail trover and contempt cases;

(3) All judgments or orders directing that an accounting be had;

(4) All judgments or orders granting or refusing applications for receivers or for interlocutory or final injunctions;

(5) All judgments or orders granting or refusing applications for attachment against fraudulent debtors;

(6) All judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders;

(7) All judgments or orders refusing applications for dissolution of corporations created by the superior courts; and

(8) All judgments or orders sustaining motions to dismiss a caveat to the probate of a will.

(b) Where the trial judge in rendering an order, decision, or judgment, not otherwise subject to direct appeal, certifies within ten days of entry thereof that the order, decision, or judgment is of such importance to the case that immediate review should be had, the Supreme Court or the Court of Appeals may thereupon, in their respective discretions, permit an appeal to be taken from the order, decision, or judgment if application is made thereto within ten days after such certificate is granted. The application shall be in the nature of a petition and shall set forth the need for such an appeal and the issue or issues involved therein. The applicant may, at his or her election, include copies of such parts of the record as he or she deems appropriate, but no certification of such copies by the clerk of the trial court shall be necessary. The application shall be filed with the clerk of the Supreme Court or the Court of Appeals and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties in the case in the manner prescribed by Code Section 5-6-32, except that such service shall be perfected at or before the filing of the application. The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed. Within ten days after an order is issued granting the appeal, the applicant, to secure a review of the issues, may file a notice of appeal as provided in Code Section 5-6-37. The notice of appeal shall act as a supersedeas as provided in Code Section 5-6-46 and the procedure thereafter shall be the same as in an appeal from a final judgment.

(c) In criminal cases involving a capital offense for which the death penalty is sought, a hearing shall be held as provided in Code Section 17-10-35.2 to determine if there shall be a review of pretrial proceedings by the Supreme Court prior to a trial before a jury. Review of pretrial proceedings, if ordered by the trial court, shall be exclusively as provided by Code

Section 17-10-35.1 and no certificate of immediate review shall be necessary.

(d) Where an appeal is taken under any provision of subsection (a), (b), or (c) of this Code section, all judgments, rulings, or orders rendered in the case which are raised on appeal and which may affect the proceedings below shall be reviewed and determined by the appellate court, without regard to the appealability of the judgment, ruling, or order standing alone and without regard to whether the judgment, ruling, or order appealed from was final or was appealable by some other express provision of law contained in this Code section, or elsewhere. For purposes of review by the appellate court, one or more judgments, rulings, or orders by the trial court held to be erroneous on appeal shall not be deemed to have rendered all subsequent proceedings nugatory; but the appellate court shall in all cases review all judgments, rulings, or orders raised on appeal which may affect the proceedings below and which were rendered subsequent to the first judgment, ruling, or order held erroneous. Nothing in this subsection shall require the appellate court to pass upon questions which are rendered moot.

(Orig. Code 1863, § 4159; Code 1868, § 4191; Code 1873, § 4250; Code 1882, § 4250; Ga. L. 1890-91, p. 82, § 1; Civil Code 1895, § 5526; Penal Code 1895, § 1069; Civil Code 1910, § 6138; Penal Code 1910, § 1096; Code 1933, § 6-701; Ga. L. 1965, p. 18, § 1; Ga. L. 1968, p. 1072, § 1; Ga. L. 1975, p. 757, § 1; Ga. L. 1979, p. 619, §§ 1, 2; Ga. L. 1984, p. 599, § 1; Ga. L. 1988, p. 1437, § 1; Ga. L. 1994, p. 347, § 1.)

The 1994 amendment, effective July 1, 1994, in subsection (b), in the third sentence, inserted "or her" and "or she" and, in the seventh sentence, substituted "30 days" for "15 days" and deleted "the response of the opposing party or parties is filed with the court or, in the event that no response is filed, within 25 days of the date on which" preceding "the application".

Cross references. - Certification for immediate review of nonfinal judgments, § 5-7-2.

Applicability of section to orders denying summary judgment, see § 9-11-56.

Right of appeal by first offenders placed on probation, see § 42-8-64.

Granting of application for leave to appeal interlocutory order, Rules of the Supreme Court of the State of Georgia, Rule 22.

Jurisdictional statement and copy of order and compliance with statutory duty to file notice of appeal, Rules of the Supreme Court of the State of Georgia, Rule 24.

Leave to appeal interlocutory order, Rules of the Court of Appeals of the State of Georgia, Rule 29.

Leave to appeal, Rules of the Court of Appeals of the State of Georgia, Rule 40.

Law reviews. - For article discussing the inefficiency of mandamus and impeachment as remedies for judicial inaction, see 5 Ga. St. B.J. 467 (1969). For article surveying Georgia cases in the area of trial practice and procedure from June 1977 through May 1978, see 30 Mercer L. Rev. 239 (1978). For article surveying judicial developments in Georgia's trial practice and procedure laws, see 31 Mercer L. Rev. 249 (1979). For article surveying developments in Georgia trial practice and procedure from mid-1980 through mid-1981, see 33 Mercer L. Rev. 275 (1981). For article surveying appellate practice and procedure, see 34 Mercer L. Rev. 3 (1982). For article surveying recent developments in administrative law, see 37 Mercer L. Rev. 503 (1985). For annual survey of appellate practice and procedure, see 38 Mercer L. Rev. 47

(1986). For annual survey of trial practice and procedure, see 38 Mercer L. Rev. 383 (1986). For annual survey of appellate practice and procedure, see 40 Mercer L. Rev. 51 (1988). For article, "Intangible Tax Appeals After Blank v. Collins; The Uncertainty Continues," see 27 Ga. St. B.J. 78 (1990). For article, "Let's Revise Appellate Procedure in Georgia," see 27 Ga. St. B.J. 135 (1991). For article, "Getting Certiorari Granted", 28 Ga. St. B.J. 90 (1991). For annual survey of appellate practice and procedure, see 43 Mercer L. Rev. 73 (1991). For annual survey of domestic relations, see 43 Mercer L. Rev. 243 (1991). For article, "Appeals, Interlocutory and Discretionary Applications; and Post-Judgment Motions in the Georgia Courts: The Current Practice and the Need for Reform Legislation," see 44 Mercer L. Rev. 17 (1992).

For comment on Sayers v. Rothberg, 222 Ga. 626, 151 S.E.2d 445 (1967), see 3 Ga. St. B.J. 489 (1967). For comment on Milholland v. Oglesby, 223 Ga. 230, 154 S.E.2d 194 (1967), see 4 Ga. St. B.J. 392 (1968).

## JUDICIAL DECISIONS

### ANALYSIS

#### General Consideration

1. Constitutionality and Purpose of Section
2. Construction in General

#### What Are Final, Appealable Judgments

##### Rulings Not Appealable Without Certificate

1. In General
2. Motions to Dismiss
3. Motions Regarding Default Judgments
4. Rulings Concerning Counterclaims and Cross Actions

##### Summary Judgments

1. Grants
2. Denials

##### Judgments on Motions for New Trial

1. Grants
2. Denials

##### Injunctions and Restraining Orders

##### Judgments of Contempt

##### Review of Collateral Judgments, Rulings, or Orders

##### Moot Issues

##### Application

1. In General
2. Certificates of Immediate Review

Query: GACODE:|5-6-35|

5-6-35. Cases requiring application for appeal; contents, filing, and service of application; exhibits; response by opposing party; issuance of appellate court order regarding appeal; procedure; supersedeas.

(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.

(b) All appeals taken in cases specified in subsection (a) of this Code section shall be by application in the nature of a petition enumerating the errors to be urged on appeal and stating why the appellate court has jurisdiction. The application shall specify the order or judgment being appealed and, if the order or judgment is interlocutory, the application shall set forth, in addition to the enumeration of errors to be urged, the need for interlocutory appellate review.

(c) The applicant shall include as exhibits to the petition a copy of the order or judgment being appealed and should include a copy of the petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion. An applicant may include copies of such other parts of the record or transcript as he deems appropriate. No certification of such copies by the clerk of the trial court shall be necessary in conjunction with the application.

(d) The application shall be filed with the clerk of the Supreme Court or the Court of Appeals

within 30 days of the entry of the order, decision, or judgment complained of and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties as provided by law, except that the service shall be perfected at or before the filing of the application. When a motion for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the application shall be filed within 30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion.

(e) The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The response may point out that the decision of the trial court was not error, or that the enumeration of error cannot be considered on appeal for lack of a transcript of evidence or for other reasons.

(f) The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed.

(g) Within ten days after an order is issued granting the appeal, the applicant, to secure a review of the issues, shall file a notice of appeal as provided by law. The procedure thereafter shall be the same as in other appeals.

(h) The filing of an application for appeal shall act as a supersedeas to the extent that a notice of appeal acts as supersedeas.

(i) This Code section shall not affect Code Section 9-14-52, relating to practice as to appeals in certain habeas corpus cases.

(Ga. L. 1979, p. 619, §§ 3, 6; Ga. L. 1982, p. 3, § 5; Ga. L. 1984, p. 22, § 5; Ga. L. 1984, p. 599, § 2; Ga. L. 1986, p. 1591, § 2; Ga. L. 1988, p. 1357, § 1; Ga. L. 1991, p. 412, § 1; Ga. L. 1994, p. 347, § 2.)

The 1994 amendment, effective July 1, 1994, in subsection (f), substituted "30 days" for "15 days" and deleted "response of the opposing party or parties is filed with the court or, in the event that no response is filed, within 25 days of the date on which the" preceding "application was filed".

Cross references. - Petitions for alimony or child support when no divorce is pending, §§ 19-6-10, 19-6-11.

Filings in clerk's office, Rules of the Supreme Court of the State of Georgia, Rule 1.

Application for leave to appeal final judgment, Rules of the Supreme Court of the State of Georgia, Rule 25.

Leave to appeal interlocutory order, Rules of the Court of Appeals of the State of Georgia, Rule 29.

Editor's notes. - Ga. L. 1986, p. 1591, § 3, not codified by the General Assembly, provided that that Act applies to actions filed or presented for filing on or after July 1, 1986, and to any action pending on July 1, 1986, with respect to any claim, defense, or other position which is first raised in the action on or after July 1, 1986.

Law reviews. - For article surveying appellate practice and procedure, see 34 Mercer L. Rev. 3

(1982). For survey article on domestic relations, see 34 Mercer L. Rev. 113 (1982). For annual survey of domestic relations law, see 35 Mercer L. Rev. 127 (1983). For article surveying recent developments in administrative law, see 37 Mercer L. Rev. 503 (1985). For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For annual survey of appellate practice and procedure, see 38 Mercer L. Rev. 47 (1986). For annual survey of criminal law, see 38 Mercer L. Rev. 129 (1986). For annual survey of law of domestic relations, see 38 Mercer L. Rev. 179 (1986). For article, "Battling the Many-Headed Hydra: Abusive Litigation Law in Georgia," see 25 Ga. St. B.J. 65 (1988). For article, "Intangible Tax Appeals After Blank v. Collins; The Uncertainty Continues," see 27 Ga. St. B.J. 78 (1990). For annual survey on law of domestic relations, see 42 Mercer L. Rev. 201 (1990). For article, "Let's Revise Appellate Procedure in Georgia," see 27 Ga. St. B.J. 135 (1991). For article, "Getting Certiorari Granted", 28 Ga. St. B.J. 90 (1991). For annual survey of appellate practice and procedure, see 43 Mercer L. Rev. 73 (1991). For annual survey of domestic relations, see 43 Mercer L. Rev. 243 (1991). For article, "Appeals, Interlocutory and Discretionary Applications, and Post-Judgment Motions in the Georgia Courts: The Current Practice and the Need for Reform Legislation," see 44 Mercer L. Rev. 17 (1992).

For note, "Restrictions on the Right to Direct Appeal under Georgia's Appellate Practice Act," see 21 Ga. St. B.J. 43 (1984).

## JUDICIAL DECISIONS

### ANALYSIS

#### General Consideration

#### Application

1. In General
2. Judgments Concerning Child Custody
3. Divorce
4. Garnishment
5. Revocation of Probation
6. Damages Where Judgment Is \$10,000.00 or Less
7. Appeals Under § 9-11-60
8. Attorney's Fees or Expenses
9. Zoning Cases

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A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 5-6-35 of the Official Code of Georgia 22  
2 Annotated, relating to cases requiring an application for an 23  
3 appeal, the contents, filing, and service of the 24  
4 application, exhibits, responses by opposing parties, 25  
5 issuance of orders regarding appeals, procedure, and 26  
6 supersedeas, so as to provide that when an appeal in a case 27  
7 enumerated in subsection (a) of Code Section 5-6-34, but not 28  
8 in subsection (a) of Code Section 5-6-35, is initiated by 29  
9 filing an otherwise timely application for permission to 30  
10 appeal pursuant to subsection (b) of Code Section 5-6-35  
11 without also filing a timely notice of appeal, the appellate 31  
12 court shall have jurisdiction to decide the case and shall 32  
13 grant the application; to provide that thereafter the appeal 33  
14 shall proceed as provided in subsection (g) of Code Section 34  
15 5-6-35; to repeal conflicting laws; and for other purposes. 35

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA: 38

17 SECTION 1. 40

18 Code Section 5-6-35 of the Official Code of Georgia 42  
19 Annotated, relating to cases requiring an application for an 43  
20 appeal, the contents, filing, and service of the 44  
21 application, exhibits, responses by opposing parties, 45  
22 issuance of orders regarding appeals, procedure, and 46  
23 supersedeas, is amended by adding at the end of said Code 47  
24 section a new subsection (j) to read as follows:

25 "(j) When an appeal in a case enumerated in subsection (a) 49  
26 of Code Section 5-6-34, but not in subsection (a) of this 50  
27 Code Section, is initiated by filing an otherwise timely 51  
28 application for permission to appeal pursuant to 52  
29 subsection (b) of this Code section without also filing a 53  
30 timely notice of appeal, the appellate court shall have 54  
31 jurisdiction to decide the case and shall grant the 55  
32 application. Thereafter the appeal shall proceed as 56  
33 provided in subsection (g) of this Code section." 57

1

SECTION 2.

60

3

All laws and parts of laws in conflict with this Act are  
repealed.

62

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1 To amend Code Section 5-6-35 of the Official Code of Georgia 22  
 2 Annotated, relating to cases in which application for appeal 23  
 3 is required for such cases to be appealed to the appellate 24  
 4 courts, so as to change the provisions relating to appeals 25  
 5 in certain domestic relations cases; to provide that appeals 26  
 6 may be taken from final judgments in certain enumerated 27  
 7 domestic relations cases pursuant to the provisions of Code 28  
 8 Section 5-6-34; to repeal conflicting laws; and for other 29  
 9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA: 32

11 SECTION 1. 34

12 Code Section 5-6-35 of the Official Code of Georgia 36  
 13 Annotated, relating to cases in which application for appeal 37  
 14 is required for such cases to be appealed to the appellate 38  
 15 courts, is amended by striking in its entirety paragraph (2) 39  
 16 of subsection (a) and inserting in lieu thereof a new 40  
 17 paragraph (2) to read as follows: 41

18 "(2) Appeals from judgments or orders in divorce, 43  
 19 alimony, child custody, and other domestic relations 44  
 20 cases including, but not limited to, granting or 45  
 21 refusing a divorce or temporary or permanent alimony, 46  
 22 awarding or refusing to change child custody, or holding 47  
 23 or declining to hold persons in contempt of such alimony 48  
 24 or child custody judgment or orders; provided, however, 49  
 25 that the provisions of this paragraph shall not apply to  
 26 appeals from judgments or final orders involving child 50  
 27 custody, or any orders involving the incarceration of 51  
 28 persons for contempt in such matters, or cases in which 52  
 29 the amount in controversy exceeds \$10,000.00, which 53  
 30 cases shall be appealable solely to the Supreme Court of  
 31 Georgia. The amount in controversy shall be defined as 54  
 32 the sum of the total value of the combined assets of the 55  
 33 parties as listed in either party's domestic relations 56  
 34 financial affidavit, filed pursuant to Uniform Superior  
 35 Court Rule 24.2, and the total of all present and future 57

1 payments and receipts awarded or allocated by the 58  
2 judgment or final order complained of, without reduction 59  
3 to present value;".

4 SECTION 2. 62

5 All laws and parts of laws in conflict with this Act are 65  
6 repealed.

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AN ACT

1 To amend Code Section 5-6-35 of the Official Code of Georgia 22  
2 Annotated, relating to cases requiring application for 24  
3 appeal, so as to provide for expedited consideration of 25  
4 appeals involving child custody; to provide for decisions 26  
5 within 90 days following specified events; to repeal  
6 conflicting laws; and for other purposes. 27

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA: 30

8 SECTION 1. 32

9 Code Section 5-6-35 of the Official Code of Georgia 34  
10 Annotated, relating to cases requiring application for 35  
11 appeal, is amended by striking in its entirety subsection 36  
12 (g) and inserting in lieu thereof the following: 37

13 "(g) Within ten days after an order is issued granting the 39  
14 appeal, the applicant, to secure a review of the issues, 40  
15 shall file a notice of appeal as provided by law. The 41  
16 procedure thereafter shall be the same as in other 42  
17 appeals, except that appeals involving child custody shall  
18 be given expedited consideration, with decisions issued 43  
19 from the court within 90 days from the date of oral 44  
20 argument or, if there is no oral argument, within 90 days 45  
21 from the date the appellee's brief or the cross-appellee's  
22 brief is filed." 46

23 SECTION 2. 49

24 All laws and parts of laws in conflict with this Act are 51  
25 repealed.

\$.10

S. B. 726