



**A CITIZEN'S GUIDE
TO
FILING APPEALS
IN THE
COURT OF APPEALS
OF GEORGIA**

July 1, 2009

A CITIZEN'S GUIDE TO FILING APPEALS IN THE COURT OF APPEALS OF GEORGIA

This pamphlet is designed primarily for parties representing themselves without the assistance of a lawyer. It sets out the basic procedural steps that must be followed in appealing to the Court of Appeals of Georgia. **THIS PAMPHLET IS NOT LEGAL ADVICE AND MAY NOT BE CITED AS LEGAL AUTHORITY.** The pamphlet should be used in conjunction with the state statutes and court rules. The rules are available from the Clerk's Office or the Court's website at:

www.gaappeals.us. The rules are subject to change at any time. The most current version will be posted on the Court web page. The Georgia Code (statutes) are available on the web at: www.legis.state.ga.us.

Self-represented (pro se) parties are encouraged to seek legal representation. However, if parties are unable to afford legal representation and desire to pursue their own appeal, then reading the Appellate Practice Act, Title 5, Chapter 6 of the Official Code of Georgia Annotated is important. These statutes can be found in county law libraries, law school libraries and many public libraries.

Contact by any party with a judge of this Court or any member of a judge's staff is strictly forbidden. All communication with the Court shall be by written pleadings (documents) filed with the Court, with service to opposing counsel, or oral or written communications with the clerk of this Court or the clerk's staff. If you have specific questions about rules or procedures of the Court of Appeals of Georgia, you may call the Clerk's Office and the staff will assist you. However, you must remember that employees of the Court of Appeals of Georgia are not permitted to give legal advice or make specific recommendations to you on how you should pursue your claims on appeal or defend against an appeal.

You are not permitted to file pleadings on behalf of anyone other than yourself unless you are a licensed attorney admitted to practice in this Court. A corporation must be represented by a licensed attorney and may not be represented by an employee or officer of the corporation. See Eckles v. Atlanta Technology Group, Inc., 267 Ga. 801 (1997). While you have the constitutional right in the State of Georgia to represent yourself, the unauthorized practice of law in Georgia is forbidden and may subject you to criminal penalties. See OCGA § 15-19-51.

TERMS WHICH YOU SHOULD KNOW

APPEAL - A review by the Court of Appeals of Georgia of what happened in the trial court to determine whether any mistakes of law occurred, and if so, whether the party who filed the appeal is entitled to have the judgment of the trial court reversed, vacated, remanded (sent back to the trial court for further proceedings) or otherwise changed.

APPELLANT - A party who appeals from the trial court's decision.

APPELLEE - A party against whom an appeal is taken and who responds to the appeal.

BRIEF - A written statement that explains the arguments of a party to an appeal.

CERTIFICATE OF SERVICE - A statement by a party that he or she has served (delivered to or provided) the opposing party with a copy of a document prior to its filing with the Court. The Certificate of Service must be dated and signed by the party filing the document and it must contain the name and complete address of the opposing party. No document will be accepted for filing without a Certificate of Service.

DISCRETIONARY APPLICATION - There are certain types of cases in which a party does not have the right to a direct appeal, but must first obtain permission to file a direct appeal by means of an application. Most of these case types and the procedures that must be followed to file an application for discretionary appeal are set out in OCGA § 5-6-35. OCGA § 42-12-1 (the Prisoner Litigation Reform Act of 1996) sets out another type of case which must be initiated by filing a discretionary application.

ENUMERATION OF ERRORS - The Enumeration of Errors is the portion of the appellant's brief which states specifically what the appealing party claims is error committed by the trial court and states the place in the record or transcript where the error occurred. This should be Part II of the appellant's brief.

INTERLOCUTORY APPLICATION - An interlocutory application is a request to the Court of Appeals to permit an appeal to be filed from an order of the trial court even though the trial court has not yet entered its final order or judgment in the case.

JURISDICTION - The power or authority given the Court of Appeals by the Georgia Constitution and laws of this State to hear and determine a particular type of case on appeal. For the jurisdiction of the Supreme Court of Georgia and the Court of Appeals of Georgia, see Art. VI, Sec. V, Para. III and Art. VI, Sec. VI, Para. I through VI of the 1983 State Constitution.

MOTION - A written request asking the Court to take some action or issue a specific ruling or order.

MOTION FOR RECONSIDERATION - This motion is a written request by a party asking the Court to reconsider one of its orders or opinions. Motions for Reconsideration must be physically filed with the Court within 10 days of the date the order or opinion to be reconsidered was issued.

NOTICE OF APPEAL - The document which is required to be filed in the trial court to initiate a direct appeal. In most cases, it must be filed within 30 days of the entry of the order or judgment of the trial court being appealed. For forms of Notices of Appeals, see OCGA § 5-6-51; also Form 1 of this booklet.

NOTICE OF INTENT - A document which is filed with the Court of Appeals to alert the Court that a party intends to apply for a Writ of Certiorari with the Supreme Court, i.e., request the Supreme Court to review the decision of the Court of Appeals. See Form 3.

NOTICE OF FILING PETITION FOR CERTIORARI - A document filed with the Court of Appeals for the purpose of notifying the Court of Appeals to hold the Remittitur. See Form 4.

OPINION - An opinion or decision is the written finding of the Court in a particular appeal. An opinion of the Court will be authored by one judge and two or more judges will concur in the decision.

ORAL ARGUMENT - Oral argument is the oral presentation of a party's point of view regarding a direct appeal to a panel of judges. Permission for oral argument must be requested by the parties and granted by the Court. While oral argument is welcomed by the Court, most of the cases are decided on briefs alone, and without oral argument.

ORDER - A written direction from the Court either on its own motion or in response to a party's motion.

PAUPER'S AFFIDAVIT (Affidavit of Indigency) - A sworn statement by a party that the party is unable to pay the filing fee in an appeal or application. The pauper's affidavit must be sworn to before a notary public, under penalty of perjury. See Form 2 of this booklet.

PRO SE - A person who does not have an attorney to represent him or her and who appears (by filing documents or orally arguing) on his or her own behalf before the Court.

RECORD - The record is a compilation of the pleadings (papers) filed in the trial court in a case including any motions, decisions, orders or judgments filed. In a Notice of Appeal, a party must designate the portions of the record to be prepared for review by the Court of Appeals.

REMITTITUR - A document issued by the Court of Appeals of Georgia to the trial court which returns jurisdiction to the trial court and shows the final judgment of the Court of Appeals, either reversing or affirming the trial court's decision.

TRANSCRIPT - A typed document containing the testimony which occurred and exhibits admitted during a hearing or trial in the trial court related to a specific case. A transcript must be certified by the court reporter and the clerk of the trial court and delivered to the Court of Appeals by the trial court clerk. The Court of Appeals cannot accept a transcript delivered to the Court by a party or attorney even if it is certified.

THE COURT OF APPEALS OF GEORGIA

The Court of Appeals of Georgia is the intermediate appellate court for the State of Georgia. Currently, the Court has twelve judges and four divisions. The Court has a chief judge who is the administrative head of the Court. Each division, which is a panel of three judges, is headed by a presiding judge.

JURISDICTION OF THE COURT OF APPEALS

The Court of Appeals of Georgia reviews all appeals from the trial courts in which jurisdiction is not exclusively reserved to the Supreme Court. The Constitution of the State of Georgia, Article VI, Section VI, Para. I et seq., provides that the Supreme Court has exclusive jurisdiction over election contests, the construction of treaties or the Constitutions of the State of Georgia and the United States and challenges to the constitutionality of a law, ordinance or constitutional provision. The Supreme Court has general appellate jurisdiction over cases involving title to land; equity; wills; habeas corpus; extraordinary remedies; divorce and alimony; all cases certified to it by the Court of Appeals and all cases in which a sentence of death was or could be imposed.

LOCATION AND BUSINESS HOURS

The Court of Appeals of Georgia is located at Suite 501, 47 Trinity Avenue, Atlanta, Georgia 30334. The regular business hours of the Clerk's Office are Monday through Friday from 8:30 a.m. until 4:30 p.m.

ORDERS WHICH MAY BE APPEALED

Generally, any final order of a trial court may be appealed. An order which disposes of the entire matter in litigation as to one or more parties is a final order. An order which is not final is an interlocutory order, and it may be appealed by an interlocutory application only if the trial court grants a Certificate of Immediate Review.

HOW TO APPEAL A CASE

An appeal is a review of what happened in the trial court to determine if an error occurred and whether the appellant is entitled to relief. The Court of Appeals of Georgia is bound by the record from the trial court. Parties are not permitted to give testimony before the Court of Appeals or to introduce physical or documentary evidence which was not introduced in the trial court. The Court of Appeals decides an appeal strictly on the basis of the trial court record, briefs and, in some instances, oral arguments of the parties. There are three methods of filing an appeal: direct appeals, discretionary applications and interlocutory applications.

FILING AN APPEAL

Documents submitted to the Court must be filed with the Clerk's Office, be signed by the party or counsel, and contain a Certificate of Service to the opposing party or counsel. Parties must file an original and two copies of all documents since three judges are required to act on dispositions in the Court of Appeals.

Documents may be mailed, sent by express mail or courier service, or hand delivered. Fax filings are not accepted. See Rule 4 concerning the date of filing for these different types of delivery. The Clerk's Office closes at 4:30 p.m., but the Court has a drop box for filings outside the Clerk's Office on the ground floor of the 47 Trinity Avenue building in Atlanta. It is a gray metal mailbox. Although building hours are subject to change, currently, the Georgia Building Authority does not lock the Judicial Building until 5:00 p.m. Any filings placed in the drop box will be removed at

approximately 8:15 a.m. the following day. Any items in the drop box, if accompanied by the proper filing fee, if required, or a sufficient pauper's affidavit, if required, will be deemed filed on the previous business day, assuming the documents are properly signed and have an appropriate Certificate of Service.

COSTS

The cost of filing a direct appeal or an application is \$80.00 for criminal cases and \$300 for civil cases. Costs must be paid when an application is filed. In a direct appeal, costs are paid when the appellant files his or her brief. If a case is dismissed prior to the filing of the appellant's brief, costs are required to be paid upon receipt of the Court's bill for costs. The clerk is prohibited from receiving an application for filing without the filing fee or a sufficient pauper's affidavit pursuant to OCGA § 5-6-4. If an application is granted, another fee is not required to file the appellant's brief under the subsequent direct appeal.

PAUPER'S AFFIDAVIT

A party who is financially unable to pay the filing fee, not just reluctant to pay, may fill out an affidavit of indigence stating under an oath and under penalty of perjury, that the party is unable to pay the filing fee. A sufficient pauper's affidavit must be sworn to before a notary public, and signed, sealed and dated by the notary public. If the trial court record filed with this Court already contains evidence of indigence, it is not necessary to file a pauper's affidavit. Indigent status will result in a waiver by the Court of Appeals of the filing fee; it does not excuse a party from paying copy costs.

HOW TO ACCESS COURT RECORDS

You can check the status of your case from the docket or see opinions of the Court on the Court's website at: www.gaappeals.us. Although the text of briefs, orders and records are not currently available on the web page, you can review these records at the office of the clerk. Photostatic copies of documents filed with the Court of Appeals are available from the clerk at a cost of \$1.00 per page.

TYPES OF APPEALS

DISCRETIONARY APPLICATIONS

An appeal must be initiated by discretionary application if it is listed in OCGA § 5-6-35. Discretionary applications are filed directly with the Court of Appeals. The discretionary application must be filed within 30 days (or 7 days if a dispossessory action) from the date of the trial court order or judgment appealed. The discretionary application must contain a copy of the order or judgment being appealed which was stamped "filed" in the trial court. The discretionary application should also contain so much of the record as the applicant thinks the Court must review in order to make a determination that the trial court likely committed reversible error.

Applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of any attached exhibits and portions of the record. An original and two copies of the application must be filed with service made to the opposing counsel or party. An application should contain an index and tabs for the exhibits included.

The respondent (opposing party) has 10 days from the date of the filing of a discretionary application to file a response, if respondent wishes to do so. A response is not required.

The Court will issue an order within 30 days of the docketing of the application, granting, denying or dismissing the application. If the Court grants the application, the parties have 10 days from the date of the order granting the application to file a Notice of Appeal in the trial court. The case will then proceed as a direct appeal.

If a party files an application when the party should have filed a direct appeal, the application will be granted and the party will have the right to file a Notice of Appeal within 10 days of the date of the order granting the application. See OCGA § 5-6-35 (j). This does not hold true in the reverse. That is, if a party files a direct appeal and should have filed an application, the direct appeal will be dismissed for lack of jurisdiction.

A list of the items which should be included in a discretionary application follows:

- (1) A cover page which shows:
 - (a) the style of the case (case name indicating the parties' names: applicant(s) vs. respondent(s);
 - (b) the name and county of the originating trial court and trial court case number;
 - (c) a blank line for entry of the Court of Appeals docket number; and
 - (d) the title of the application;
- (2) An explanation of why the Court of Appeals of Georgia rather than the Supreme Court of Georgia has jurisdiction;
- (3) A short statement of the facts of the case and trial court proceedings that are pertinent to the argument;
- (4) An argument stating the reasons why the Court of Appeals should grant the discretionary application by:
 - (a) showing the existence of reversible error or
 - (b) showing why a precedent (a decision which will be a rule in all future similar situations) needs to be set;

Citations to the trial court pleadings, transcripts, case law, the constitution, and statutes supporting your argument should be included;

- (5) The signature and full postal address of the applicant;

- (6) A certificate of service containing the full name and postal address of the opposing party;
- (7) Tabbed and indexed exhibits including:
 - (a) A stamped filed copy of the order being appealed;
 - (b) Copies of the pleadings filed in the trial court (as necessary to support reasons the court should grant the application); and
- (c) The portion of transcripts or depositions needed to support the reasons the Court should grant the application.

INTERLOCUTORY APPLICATIONS

Interlocutory applications are appeals from orders in the trial court which do not terminate or dispose of the case. An interlocutory application may be filed upon the grant of a Certificate of Immediate Review by the trial court. The trial court's decision to grant a Certificate of Immediate Review is entirely within the discretion of the trial court and not appealable.

If the trial court grants a Certificate of Immediate Review, it must be entered in the trial court within 10 days of the date of the entry of the order or judgment being appealed. The interlocutory application must be filed with the Court of Appeals within 10 days of the date of the entry of the Certificate of Immediate Review. Failure to meet any of these time frames will most likely result in the dismissal of the interlocutory application.

An interlocutory application must contain a copy of the order or judgment being appealed which is stamped "filed" in the trial court and a stamped "filed" copy of the Certificate of Immediate Review. The interlocutory application should also contain so much of the record as the parties deem appropriate for the Court to consider. Applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record. An original and two copies of an application must be filed.

The respondent has 10 days from the date of the filing of the interlocutory application to file a response, if respondent wishes to do so. A response is not required.

The Court of Appeals shall grant, deny or dismiss the interlocutory application within 45 days of the filing date of the interlocutory application.

DIRECT APPEALS

The types of cases which may be appealed to the Court of Appeals of Georgia by direct appeal are set out in O.C.G.A. § 5-6-34 (a).

Direct appeals are initiated by filing a Notice of Appeal. **The Notice of Appeal is not filed with the Court of Appeals.** Instead, it is filed with the clerk of the trial court in which the judgment or order appealed from is entered. Generally, the Notice of Appeal must be filed within 30 days of the date of the entry of the order or judgment which is being appealed. See OCGA § 5-6-38. The date

of the entry of the order or judgment is the date the order or judgment is filed and clocked in by the clerk of the trial court. If the appealable order is on a dispossessory, and is not subject to OCGA § 5-6-35 requiring the appeal to be by discretionary application, the time for filing the Notice of Appeal is 7 days. See OCGA § 44-7-56.

The Notice of Appeal, by law (OCGA § 5-6-37), must contain:

- (1) the title and docket number of the case;
- (2) the name of the appellant and the name, address, and bar number of appellant's attorney, if any;
- (3) a concise statement of the judgment, ruling or order entitling the appellant to an appeal;
- (4) the name of the court to which the appeal is directed (the Court of Appeals of Georgia);
- (5) a designation of portions of the record to be omitted from the trial court record on appeal, if any;
- (6) a concise statement of why the Court of Appeals has jurisdiction of the appeal rather than the Supreme Court; and
- (7) a brief statement of the offense and the punishment ordered if the appeal is from a judgment of conviction in a criminal case.

The Notice of Appeal should state whether the record will include transcripts of evidence. It must also be signed by the appellant and must have the appellant's complete address and telephone number.

The Notice of Appeal must be accompanied by a Certificate of Service. The Certificate of Service must contain the complete address of all appellees or if an appellee is represented by counsel, the address of his or her attorney. Without these complete addresses, the clerk will be unable to send the Docketing Notices, and therefore, will return the Notice of Appeal and record to the trial court.

A. DOCKETING

The trial court clerk will prepare a copy of the record in accordance with the Notice of Appeal. The record, and transcript, if any, will be sent by the clerk of the trial court to the Court of Appeals, along with a copy of the Notice of Appeal. The final order of the trial court which is being appealed should be included in the record from the trial court accompanying the Notice of Appeal and must have been stamped "filed" by the clerk of the trial court. If the order does not contain the trial court clerk's stamp, the Notice of Appeal and record will be returned to the trial court.

The Clerk of the Court of Appeals will send a notice to the parties or their attorneys that the appeal has been received and docketed. **This "Docketing Notice" is very important since it contains the deadlines for filing briefs, requests to argue, and calendaring information.** The Docketing Notice should be read carefully.

B. BRIEFS

APPELLANT'S BRIEF

The appellant must file a brief, an original and two copies, with the Court of Appeals within 20 days of the docketing date. Failure to file the appellant's brief timely may result in the dismissal of the

appeal and/or contempt. The brief must conform to the rules of the Court and be served upon opposing counsel or parties.

The appellant's brief should contain the following parts:

- (1) a statement of the proceedings in the trial court, the relevant facts of the case from the record, citations to the record or transcript, and the method by which each listed error was preserved in the trial court for consideration on appeal;
- (2) an enumeration (listing) of the errors made by the trial court; and
- (3) the argument why the trial court was not correct, the applicable standard of review, and citations to cases, statutes, and other legal authorities supporting the argument and appropriate standard of review.

The appellant's brief tells the Court what judgments or orders the appellant is appealing, why the appellant thinks the trial court acted incorrectly in making those judgments or orders, how the trial court's actions hurt the appellant, and what the appellant wants the Court of Appeals to do if it finds the trial court acted incorrectly.

The appellant may use only the information in the record and transcripts to prepare the statement of facts since the Court is not a fact-finding court but a court for corrections of errors. For every statement of fact there should be a citation or reference to a page in the record or transcript.

APPELLEE'S BRIEF

The appellee has 40 days from the docketing date or 20 days after the appellant's brief is filed, whichever is later, to file the appellee's brief. Failure of appellee to file his or her brief may result in non consideration of the appellee's brief and/or contempt.

The appellee's brief responds to the issues raised by the appellant, showing why the appellant's arguments are not correct and providing support for the trial court's decision. If the appellee does not agree with the appellant's statement of facts, he or she should include the facts important to his or her case with reference to the record or transcripts.

APPELLANT'S REPLY BRIEF

The appellant has 20 days after the filing of the appellee's responsive brief to file a reply brief. The appellant's reply brief addresses the arguments made by the appellee showing how they do not overcome the arguments made in the appellant's initial brief. No new issues may be raised in the reply brief.

BRIEF PAGE LIMITS

The appellant's initial brief and appellee's responsive brief are limited to 30 pages in civil cases and 50 pages in criminal cases. The reply brief is limited to 15 pages in length.

C. REQUESTS TO ARGUE

The Court does not grant oral argument in all direct appeals. If a party wishes to request oral argument, a party must file, within 20 days of case docketing, a written request stating why, specifically, the Court would benefit from oral argument in a particular case.

If oral argument is granted by the Court, the parties will receive an order to that effect. If oral argument is granted, and a party later decides not to attend oral argument, the party must notify the opposing counsel or party and the Court. Oral argument granted to one party is automatically extended to the other party. A waiver of oral argument after it has been granted does not necessarily take the case off the oral argument calendar if the opposing party wishes to argue.

Oral argument is not permitted on applications or motions including motions for reconsideration.

NOTICE OF INTENT/NOTICE OF FILING PETITION FOR CERTIORARI

A Notice of Intent alerting the Court to hold the Remittitur while the party applies for a Petition of Certiorari to the Supreme Court must be filed within 10 days of the order or opinion of the Court of Appeals which disposed of the appeal. A Notice of Filing should be filed with the Court of Appeals whenever a Petition for Certiorari is filed with the Supreme Court.

FORM 1 - NOTICE OF APPEAL (CIVIL or CRIMINAL CASE)

NOTICE OF APPEAL

IN THE _____ (SUPERIOR, STATE, ETC.) COURT
OF _____ COUNTY

STATE OF GEORGIA

PLAINTIFF

*

CASE NUMBER

*

vs.

*

DEFENDANT

*

NOTICE OF APPEAL

Notice is given that _____ (Plaintiff/Defendant) in the above matter hereby appeals to the Court of Appeals of Georgia from the judgment of the trial court entered on the _____ day of _____, _____.

The clerk shall _____ (omit nothing from the record on appeal/will omit from the record on appeal the following: _____.)

A transcript of evidence and proceedings _____ (will/ will not) be filed for inclusion in the record on appeal.

The Court of Appeals, rather than the Supreme Court, has jurisdiction of this appeal because the issue involved is _____ and appeals of such cases are not reserved to the Supreme Court of Georgia pursuant to Article VI, Section VI, Paragraphs II and III of the Constitution of the State of Georgia.

CERTIFICATE OF SERVICE

I certify that I have this day served _____ (opposing party or attorney) with a copy of this Notice of Appeal by _____ (hand delivery/ mailing a copy first class mail postage prepaid) to him/her at: _____ (complete address of party served).

This the _____ day of _____, _____.

_____ (Sign your name.)

FORM 2 - PAUPER'S AFFIDAVIT

COURT OF APPEALS OF GEORGIA

_____ ,	*	
APPELLANT	*	
vs	*	CASE NUMBER
_____ ,	*	_____
APPELLEE		

PAUPER'S AFFIDAVIT

Comes now _____ (Appellant's name) first being duly sworn, deposes and states I am financially unable to pay the filing fee required for filing costs in the Court of Appeals of Georgia, and I request I be permitted to file _____ (Appellant's brief or Appellant's application) without having to pay filing fees.

This the _____ day of _____, _____.

(Your name printed or typed.)

(Sign your name.)

(Your complete address and telephone number.)

Sworn to and subscribed before me

this the _____ day of _____, _____.

_____ Notary Public

SEAL

FORM 3 - NOTICE OF INTENT

COURT OF APPEALS OF GEORGIA

_____ ,	*	
APPELLANT	*	
vs.	*	CASE NUMBER
_____ ,	*	
APPELLEE		_____

NOTICE OF INTENT

Comes now _____ (Appellant/Appellee) in the above appeal and files this Notice of Intent to apply for certiorari to the Supreme Court of Georgia.

This the _____ day of _____, _____.

_____ (Sign your name.)

(Your complete address.)

CERTIFICATE OF SERVICE

I certify that I have this day served _____ (opposing party or attorney) with a copy of this Notice of Intent by _____ (hand delivery/ mailing a copy first class mail postage prepaid) to him/her at: _____

(complete address of party served).

This the _____ day of _____, _____.

_____ (Sign your name.)

FORM 4 - NOTICE OF FILING CERTIORARI

COURT OF APPEALS OF GEORGIA

_____,	*	
APPELLANT	*	
vs.	*	CASE NUMBER
_____,	*	
APPELLEE		_____

NOTICE OF FILING PETITION OF CERTIORARI

Comes now _____ (Appellant/Appellee) in the above appeal and shows he/she this day filed an application for certiorari with the Supreme Court of Georgia.

This the _____ day of _____, _____.

_____ (Sign your name.)

(Your complete address.)

CERTIFICATE OF SERVICE

I certify that I have this day served _____ (opposing party or attorney) with a copy of this Notice of Filing Petition of Certiorari by _____ (hand delivery/ mailing a copy first class mail postage prepaid) to him/her at: _____

(complete address of party served).

This the _____ day of _____, _____.

(Sign your name.)