Judicial Council of Georgia
Standing Committee on Legislation
Certiorari Review Subcommittee

HB 916, Superior and State Court Appellate Practice Act

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Presenters

- Hon. Christopher J. McFadden: Subcommittee Chair; Presiding Judge, Court of Appeals of Georgia; and co-author, *Georgia Appellate Practice with Forms*
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Summary

- HB 916, the Superior and State Court Appellate Practice Act, repealed and replaced Georgia's certiorari review and notice of appeal statutes (former OCGA §§ 5-3-1 et seq.; 5-4-1 et seq.); effective July 1, 2023
- Created a modern and unified "petition for review" procedure for appealing a case from a lower judicatory to superior court or state court
- "Lower judicatory" is broadly defined to include any government official or body "exercising judicial or quasi-judicial powers authorized by law" per new OCGA § 5-3-3 (5) & (6)

The Superior and State Court Appellate Practice Act

- HB 916 effective July 1, 2023
- Act created a modern and unified "petition for review" procedure for appealing a case from a lower judicatory to superior court or state court
- Any document filed requesting review by a superior or state court of a decision (i.e., a "final judgment") of a lower judicatory, however titled, will be treated by the courts as a "petition for review" per new OCGA § 5-3-3 (9)

HB 916 Sections 1-1 & 1-2 and New OCGA § 5-3-1. Short title.

- Renamed OCGA Chapter 3 of Title 5 the "Superior and State Court Appellate Practice Act"
- Section 1-1 of the Act repealed OCGA Chapter 3 of Title 5, which governed appeals to superior court or state court (HB 916, lines 26-27, repealed former OCGA § 5-3-1 et seq.)
- Section 1-2 of the Act repealed OCGA Chapter 4 of Title 5, which governed certiorari review to superior or state court (HB 916, lines 535-536, repealed former OCGA § 5-4-1 et seq.)
- Section 1-1 of the Act (HB 916, lines 27-28) then enacted new "petition for review" Code Sections 5-3-1 to 5-3-21

New OCGA § 5-3-2.
Legislative findings and intent.

- (a): Under the previous procedures, many appeals from a lower judicatory to a superior or state court were dismissed on complex procedural grounds instead of a decision on the merits
- (b) (1): Act establishes a "single, modern, and uniform procedure" called a "petition for review" to replace the previous methods of appealing a decision rendered by a lower judicatory to a superior or state court
- (b) (2): Seeks to increase "access to justice through the greater resolution of appeals on the basis of substantive issues rather than on complex procedural grounds"
- (b) (3): Act not intended to change the current "limited appellate jurisdiction of state courts"

New OCGA § 5-3-2.
Legislative findings and intent.

- (c) (1): Courts must construe Chapter 3 of Title 5 to "render . . . decisions on the merits" instead of dismissing an appeal on procedural grounds "unless such dismissal or refusal is expressly required by statute"
- (c) (2): Courts must consider the "substance, merit, and function" of any document seeking to appeal a decision from a lower judicatory to a superior or state court, however styled, formed, or titled
- (c) (3): Courts prohibited from interpreting Act to expand the "limited appellate jurisdiction of state courts" prescribed in Ga. Const. & other OCGA chapters

New OCGA § 5-3-3. Definitions.

- (3), (5)-(6): The terms "lower judicatory" and "decision" are broadly defined to reflect that the reviewing superior or state court has appellate jurisdiction over the "judicial" and "quasi-judicial" decisions of a variety of State and local government officials

- (11): Clearly defines "respondent" which eliminated and replaced the additional and problematic previous term "opposite party"

- As used in former OCGA §§ 5-4-6 (b); 5-4-7; 5-4-9; 5-4-18, correctly identifying the "opposite party" and "respondent" was confusing to many and resulted in procedural errors, e.g., *City of Sandy Springs Bd. of Appeals v. Traton Homes, LLC*, 341 Ga. App. 551, 557 (2017)

New OCGA § 5-3-4. Jurisdiction.

- (a): Establishes the appellate jurisdiction of superior and state courts over a "final judgment" of a "lower judicatory," as defined in paragraphs (4)-(6) of new Code Section 5-3-3 (see subsection (b) below for exceptions)
- (b): Provides for exceptions to superior and state court appellate jurisdiction identical to those under previous law, but in a single and convenient list for easy reference
- (c): The provisions of the Act "preempt any local law or any locally enacted law, ordinance, regulation, rule, or procedure in conflict with [Chapter 3 of Title 5] . . . governing an appeal of a final judgment to a reviewing [superior or state] court"

New OCGA § 5-3-5.

Obligations of court; de novo proceedings; jury trials.

- Governs the standards of review in a petition for review
- (a): Default standard of review is a limited review analogous to a review by an appellate court or under the previous writ of certiorari procedure
- (b): De novo standard of review only "if a de novo proceeding is specified by law"
- (b): If de novo is required, the review is without a jury unless a jury is demanded, ordered, and authorized by law
- (c) Demand for a jury trial must be "filed in the reviewing [superior or state] court within 30 days after filing a petition for review," which is consistent with previous law

New OCGA § 5-3-6.
Petitioning for review.

- (a) File a petition for review (PFR) with the clerk of the reviewing superior or state court to invoke their appellate jurisdiction

- (b) A petitioner may file a PFR without the consent of the lower judicatory

New OCGA § 5-3-7.

Governing practices and procedures; time for petitioning for review; parties; requirements of petition; amendable defects; service.

- (a): Appellate practices and procedures not covered in the Act may be governed by superior or state court rule or order, so long as they do not conflict with the Act
- (b): A petitioner must file a PFR with the clerk of the reviewing court within 30 days after the final judgment of the LJ
- (c): All parties to the proceedings in the lower judicatory are parties in the reviewing court. See definition of "respondent" in new Code Section 5-3-3 (11)
- (d): The official that made the decision appealed is not a party, defendant, or respondent in the PFR solely on the basis that they made the decision. Again, see definition of "respondent" in new Code Section 5-3-3 (11)

New OCGA § 5-3-7.

Governing practices and procedures; time for petitioning for review; parties; requirements of petition; amendable defects; service.

- (e): Petition for review format
  - (1): A caption with name of the petitioner and the respondent (if any)
  - (2): The title "PETITION FOR REVIEW TO [SUPERIOR/STATE] COURT" below the caption
  - (3): A body that includes the items listed in (e) (3) (A)-(D)
  - (4): The name, mailing address, telephone number, and email address (if any) of the attorney for the petitioner (or only the petitioner if self-represented)

New OCGA § 5-3-7.

Governing practices and procedures; time for petitioning for review; parties; requirements of petition; amendable defects; service.

- (f): A petitioner may correct omissions made on a petition for review -- errors and omissions are an amendable defect (see also new Code Section 5-3-8 (d))
- (g) & (h): A petition for review must be served on all parties and the lower judicatory within five days after filing the petition for review in the reviewing court

New OCGA § 5-3-8.

Filing of response; timing; amendment; service.

- (a): Respondent must: file response within 30 days after being served with a PFR; and include any counterclaims, cross appeals, defenses, or third-party claims in response (if de novo proceeding)
- (b): Cross appeals and counterclaims: no response required unless one is required by the court; and automatically stand denied
- (c): Petitioner must: file reply (if any) to response within 30 days after being served with response; and include any counterclaims, cross appeals, defenses, or third-party claims in the reply (if de novo proceeding)
- (d): Specifies when and under what conditions a petition for review, response, or reply may be amended
- (e): Each party must serve a copy of his or her pleadings filed in the reviewing court on the other parties to the proceeding

New OCGA § 5-3-9.
Management of court proceedings.

- (a)-(c): Provides the reviewing superior or state court tools to manage court proceedings, including the authority to issue "such orders and writs as may be necessary"
- (d): Preserves former OCGA § 5-3-4 and clarifies what will happen if one party wants to appeal and another party on the same side refuses to appeal (lines 222-224 of the Act)
- (d): Preserves former OCGA § 5-3-5 to specify how damages are to be awarded if a party refuses or fails to appeal (lines 225-229 of the Act)
- (e): Preserves former OCGA § 5-3-30 (b), which specifies that the monetary limitations OCGA § 15-10-2 (a) (5) are not applicable in a petition for review

New OCGA § 5-3-10.

Manner for service of process.

- (a): Procedures and requirements for service of process in a petition for review (unless otherwise provided by law)
  - (1): Except (A) or (B), serve documents on a party's attorney or agent authorized to receive service
  - (2): Service in person, by mail, or electronically if consent to electronic service is given under subsection (b)
  - (3) & (4): Proof and certificate of service
  - (5): When service is perfected (as defined in new Code Section 5-3-3 (7))
  - (6): If the address of any party is unknown, mail to last known address (if not represented by an attorney of record)
  - (7): Service may be waived or acknowledged
- (b): Electronic service of process permitted, as provided in OCGA § 9-11-5 (f).

New OCGA § 5-3-11.
Extension of filing deadlines.

- (a) A person seeking a deadline extension from the reviewing court must do so before the expiration of the filing period currently in effect
- (b) Only one filing extension of up to 30 days for the filing of a petition for review, but additional deadline extensions for other documents permitted if necessary
- (c) The clerk of the reviewing superior or state court must promptly serve each party and the clerk of the lower judicatory with a copy of any extension granted and the motion requesting such extension

New OCGA § 5-3-12.
Requirements for dismissal by reviewing court.

- (a): Except for a decision on the merits, grounds for dismissing a petition for review are limited to:
  - (1) PFR not filed within the time prescribed or extended;
  - (2) Reviewing court lacks jurisdiction;
  - (3) Question presented by the petitioner is moot;
  - (4) Absence of a justiciable controversy;
  - (5) Failure of petitioner to prosecute; or
  - (6) Failure to comply with the Act, court rule, or court order
- (b) and (c): Prior to dismissal, petitioner given opportunity to cure a defect in a petition for review, bond, or affidavit of indigence; and lower judicatory given opportunity to address failure to transmit any document needed for review
- (c): But reviewing court may impose deadlines for amendments as may be necessary to permit a just and expeditious review
- (d): Parties given opportunity to address failure to perfect service if due diligence shown

New OCGA § 5-3-13.
Appropriate venue and jurisdiction; transfers.

- (a): Petitioner must file a petition for review in a superior or state court with proper venue and jurisdiction
- (b): Petition for review transferred to the correct superior or state court if filed in the wrong court (i.e., improper venue or lack of jurisdiction)

New OCGA § 5-3-14.

Audio or video recording, reporting, or transcription; expense of preparation; transcripts prepared from recollection; corrections; stipulations.

- Modeled after existing OCGA § 5-6-41 (which governs the creation of a transcript of evidence and proceedings for appellate courts)

- Similarly provides for the creation of a record in the lower judicatory for use by the reviewing superior or state court in a petition for review, as follows:

New OCGA § 5-3-14 (continued)

- (a) In civil and misd. cases, lower judicatory (LJ) may require the "audio or video recording, reporting, or transcribing of the evidence and proceedings in the lower judicatory" on the LJ's prescribed terms
- (b) In civil cases, petitioner prepares transcript at own expense if no transcript and petitioner is financially able to pay
- (c) In civil cases, LJ may order parties to share costs of reporting or transcribing if a party is financially able to pay

New OCGA § 5-3-14 (continued)

- (d): Any party may by right have any criminal or civil proceeding reported or transcribed in a LJ at such party's own expense
- (e) & (f): If a proceeding in a LJ is reported, the things listed in (e) (1)-(8) must be included
- (g) If a matter in a LJ goes unreported, transcript may be prepared from recollection or other means, e.g., recording

New OCGA § 5-3-14 (continued)

- (h): Transcript in narrative form only allowed if:
  - all parties agree; or
  - transcript prepared from recollection
- (i): Completed and filed transcript of LJ evidence and proceedings becomes part of the record
- (j) LJ clerk must include transcript of LJ evidence and proceedings in record transmitted to reviewing superior or state court

New OCGA § 5-3-14 (continued)

- (k): If the parties disagree about the contents of a transcript, the LJ must hold a hearing to "conform the record to the truth"

- (l): Transcript prepared from recollection with statement that all parties agree carries same weight as a transcript from a court reporter
  - If parties cannot agree, LJ decides whether transcript from recollection is correct
  - LJ's decision regarding disputed transcript from recollection is "final and not subject to review"

- (m) Parties may stipulate to corrections to the record or LJ may correct record transmitted to reviewing superior or state court; LJ clerk must notify reviewing court of corrected record

New OCGA § 5-3-14 (continued)

- (n): LJ may transmit supplemental record to reviewing superior or state court
- (o): Reviewing superior or state court may order up originals or other items and return to LJ when completed
- (p): If LJ does not allow a party to include a document in the record sent to the reviewing court, party may file with reviewing court with notation of the denial
- (q): If all parties agree, they may file (in the LJ) a stipulation of the case with statement of facts instead of a transcript, but stipulation must be approved by LJ to be part of the record sent to the reviewing court

New OCGA § 5-3-15.

Transmittal of court records to reviewing court; petitions; orders.

- (a): Clerk of the LJ must transmit a copy of the record in the lower judicatory to the reviewing superior or state court within 30 days after being served with a PFR (unless a shorter deadline is otherwise required by law)
- (b): LJ clerk notifies reviewing court if a petitioner in a criminal case is confined or incarcerated
- (c): LJ clerk notifies the judge (or member, etc. if not a court) of the lower judicatory if no record is available to send to reviewing court
- (d): Petitioner holds LJ clerk accountable for transmitting LJ record to the reviewing court within 30 days after being served with PFR (petitioner notifies reviewing court)

New OCGA § 5-3-16.
Payment of costs; affidavit of indigency.

- (a): All costs in LJ do not need to be paid to file a PFR, but…
- (b) & (e): For a PFR to be heard, all costs in LJ must be paid (with LJ certifying paid) and file LJ certification or affidavit of indigence with the reviewing court
- (c): PFR may be dismissed by reviewing superior or state court if costs in LJ not paid and petitioner has been ordered by reviewing court to pay such costs
- (d): No payment of LJ costs or bond and security required for "executor, administrator of an estate, or other trustee, when defending an action in such capacity or when solely defending an estate's title" (unless judgment obtained against such person and not the assets of the estate)

New OCGA § 5-3-17.

Supersedeas bonds; requirements; forfeiture.

- (a): Filing of PFR "shall act as supersedeas" and "suspend but not vacate" a LJ's final judgment
- (b) & (c): No bond needs to be given unless required by reviewing superior or state court
- (d): Unless petitioner files affidavit of indigence, supersedeas ceases if bond is required but not given
- (e): If bond is required, must be limited to "the total amount of damages, fines, fees, penalties, and surcharges imposed by the lower judicatory in the case"
- (f)-(m): Various other bond management provisions and requirements, generally consistent with previous law, e.g., comply with OCGA § 17-6-1 and U.S. and Georgia Constitutions

New OCGA § 5-3-18.

Final decision by reviewing court; service; appeals.

- (a): Provides instructions for after a superior or state court has rendered a final decision in a PFR
- (b): Clerk of the reviewing superior or state court must serve a copy of the reviewing superior or state court's written decision on the clerk of the LJ and all parties within five days after the date of the decision
- (b): Clerk of LJ must also notify the judge or member of the lower judicatory who decided the case below of the reviewing superior or state court's decision
- (c): Decision of the reviewing superior or state court is reviewable by the appropriate appellate court

New OCGA § 5-3-19.

Status after dismissal or withdrawal of petition for review.

- (a): If PFR is dismissed or withdrawn, "the rights of all parties shall be the same as if no appeal had been filed" (preserves former OCGA § 5-3-7)

- (a) (1)-(3): Clarifies how subsection (a) is to be applied — dismissal or withdrawal of a PFR=
  - (1) Does dismiss the petition for review;
  - (2) Does NOT dismiss the petitioner's underlying case from the lower judicatory or vacate the final judgment of the lower judicatory; and
  - (3) Does reinstate the final judgment of the lower judicatory as if the petition for review had never been filed

- (b): Clarifies that subsection (a) applies to all cases, regardless of the standard of review applied

New OCGA § 5-3-19.

Status after dismissal or withdrawal of petition for review.

- Overrules *Long v. Greenwood Homes, Inc.*, 285 Ga. 560 (2009), wherein:
  - Magistrate judge found for defendant in a civil case
  - Plaintiff appealed to superior court, then filed a voluntary dismissal in same court under OCGA § 9-11-41(a) (1) (A)
  - Court of Appeals held that under former OCGA § 5-3-7 (repealed by HB 916), voluntary dismissal dismissed the appeal only and reinstated the magistrate court's judgment (Supreme Court dissent agreed)
  - Supreme Court majority held that the voluntary dismissal in superior court dismissed the entire case and the appeal, because appeal was de novo under former OCGA § 5-3-29 (also repealed by HB 916)

New OCGA § 5-3-20.
Attorney's fees and expenses.

- If an action or defense in a PFR was frivolous;
- Reasonable and necessary attorney's fees and expenses of litigation damages may be assessed against a petitioner or respondent;
- As provided in OCGA § 9-15-14

New OCGA § 5-3-21.
Awarding of costs; entering of judgments.

- Provides the reviewing superior or state court guidance regarding ordering recovery of costs by the petitioner or respondent
- Depends on who prevails in PFR: petitioner or respondent
- Consistent with Code sections on the subject repealed by HB 916:
  - New (a) & (b) preserve former OCGA § 5-4-16
  - New (c) & (d) preserve former OCGA § 5-4-17

Amended OCGA § 44-7-56.

Appeal; procedure; possession and payment of rent pending appeal.

- Landlord and tenant dispossessory proceedings
- Note accelerated seven-day deadline for filing PFR instead of 30 days per new Code Section 5-3-7 (b)
- New (b) (3) & (4): Clarify into which court's registry a tenant is required to pay "all sums found by the trial court to be due for rent" and "future rent" "to remain in possession"
- Rent due and future rent paid into registry of reviewing superior court on appeal, not the magistrate court's registry

Amended OCGA § 48-5-311.

Creation of county boards of equalization; duties; review of assessments; appeals.

- Appeal a tax assessment by county board of equalization by filing a PFR with the county board of tax assessors within 30 days of decision appealed, do not file PFR in reviewing court
- (g) (2): Settlement conference required before PFR flied in reviewing court, as follows:
  - Taxpayer may appear for settlement conference in person, send an authorized agent, or both
  - Settlement conference may be conducted remotely with consent of taxpayer
  - Petitioner sends filing fee to county board of tax assessors payable to reviewing court if settlement conference unsuccessful; board then sends PFR and filing fee to reviewing court
- (g) (4) (A): Appeal without a jury heard within 30 days after PFR filed with reviewing court "unless continued by the [reviewing] court for a period not to exceed 90 days"

HB 916, Section 3-1

- HB 916 effective July 1, 2023
- Act only applies to petitions for review filed in superior or state court on or after July 1, 2023

Questions, Recommendations, or Concerns?

- Given the comprehensive nature of HB 916, we expect there will be clean up legislation needed in the 2023 Legislative Session to;
  - correct any unanticipated technical issues; or
  - add conforming amendments if needed.
- If you have any questions, amendment recommendations, or concerns, please email: HB916@georgiacourts.gov

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