



## SUPERIOR AND STATE COURT APPELLATE PRACTICE ACT — A Bench Card for Clerks —

Effective July 1, 2023, H.B. 916 (2022), the Superior and State Court Appellate Practice Act, will repeal and replace Georgia’s notice of appeal and certiorari review statutes (former OCGA §§ 5-3-1 et seq.; 5-4-1 et seq.) with a unified “petition for review” procedure for appealing cases from a lower judicatory to superior court or state court. OCGA §§ 5-3-1 to 5-3-21. The new “petition for review” is a modernized and relatively simplified process for superior or state court review of decisions from municipal courts, magistrate courts, non-Article 6 probate courts, and other lower judicatories. OCGA § 5-3-2 (b) (1); 5-3-4 (b) (6). A “lower judicatory” is broadly defined in OCGA § 5-3-3 (5)-(6) to include any government official or body “exercising judicial or quasi-judicial powers authorized by law.”

Under this new procedure, any document filed that requests a review by a superior or state court of a “final judgment” of a lower judicatory must be treated as a “petition for review” even if the petitioner titles it something else. OCGA §§ 5-3-2 (c) (2); 5-3-3 (4), (9). Treat a document titled a writ of certiorari, petition for writ of mandamus, petition for writ of prohibition, or notice of appeal as a “petition for review” if the document is requesting a review by a superior or state court. OCGA § 5-3-3 (9). The new procedure applies to any request for superior or state court review filed on or after July 1, 2023. H.B. 916 (2022), lines 1360-1361.

### GENERAL INFORMATION

#### DEFINITIONS

- “Article 6 probate court” means a probate court with expanded jurisdiction as provided in OCGA Article 6 of Chapter 9 of Title 15. OCGA §§ 5-3-3 (1); 15-9-120; 15-9-123.
- “Clerk” means a clerk of court or an individual who acts as the functional equivalent of a clerk of court if there is no official clerk of court. OCGA § 5-3-3 (2).
- “Judicatory” means any court, official, board, tribunal, commission, municipal or county authority, council, or similar body exercising judicial or quasi-judicial powers. OCGA § 5-3-3 (5).
- “Lower judicatory” means any judicatory inferior in authority to the superior and state courts and subject to the appellate jurisdiction of the superior or state courts as provided by law and the Georgia Constitution. OCGA § 5-3-3 (6).
- “Respondent” means a person adverse to the petitioner and a party to the underlying dispute in the lower judicatory. OCGA § 5-3-3 (11). The former term “opposite party” is eliminated. See OCGA § 5-3-3 (11) for prohibition on including a judge as a “respondent” and who the respondent is if there is no party adverse to the petitioner.
- “Reviewing court” means a superior or state court reviewing a final judgment under the petition for review procedure. OCGA § 5-3-3 (12).

#### APPELLATE JURISDICTION

- Unless an exception applies, the superior and state courts have appellate jurisdiction over a final judgment of a “lower judicatory” as defined to the left. OCGA §§ 5-3-3 (4); 5-3-4 (a).
- Appellate jurisdiction generally means the power to review and revise a judicial or quasi-judicial decision by a lower court or other government official.
- H.B. 916 did not change the previous appellate jurisdiction of superior or state courts. OCGA §§ 5-3-2 (b) (3), (c) (3); 15-6-8; 15-7-4 (a) (6); 15-10-41 (b) (1).
- Superior and state courts do not have appellate jurisdiction over each other. OCGA § 5-3-4 (b).

#### APPELLATE JURISDICTION EXCEPTIONS

Superior and state courts do not have appellate jurisdiction over the following courts or matters (OCGA § 5-3-4 (b) (1)-(8)):

- Juvenile courts;
- The Municipal Court of Columbus;
- The Civil Court of Macon-Bibb County;
- The Civil Court of Richmond County;
- The Georgia State-wide Business Court;
- A civil case in an Article 6 probate court;\*
- An order appointing a temporary administrator; and
- Any other court with an appeal directly to the Court of Appeals or the Supreme Court.

\*See the first definition bullet to the left.

### IMPROVE ACCESS TO JUSTICE

In enacting H.B. 916 (2022), the General Assembly found “that many appeals from a lower judicatory to a superior or state court result in dismissal on complex procedural grounds and not a decision on the merits.” OCGA § 5-3-2 (a). Accordingly, the intent of H.B. 916 is to “[i]ncrease access to justice through the greater resolution of appeals on the basis of substantive issues rather than on complex procedural grounds.” OCGA § 5-3-2 (b) (2). To achieve this goal, OCGA §§ 5-3-1 to 5-3-21 should be read “broadly so as to render decisions based on the merits of each case and avoid dismissal of any case . . . unless such dismissal or refusal is expressly required by statute.” OCGA § 5-3-2 (c) (1).

## CLERKS: WHAT YOU NEED TO KNOW

### CERTIFICATE OF PAYMENT OF COSTS

- Unless prohibited by law, no petition for review shall be heard in a reviewing court unless the petitioner: (1) pays all unpaid costs owed to the lower judiciary within 30 days after receiving notice of such costs; or (2) files an affidavit of indigence with the reviewing court. OCGA § 5-3-16 (b).
- The petitioner in a civil case shall either: obtain and file with the reviewing court a certificate of payment of costs (see attached) from the lower judiciary within five days of issuance; or file an affidavit of indigence with the reviewing court. OCGA § 5-3-16 (e).
- See the next page for a model Certificate of Payment of Costs for use in a petition for review.

### TRANSMIT THE RECORD

Upon being served with a copy of the petition for review and unless otherwise ordered by the reviewing court, the clerk of the lower judiciary shall retain the original of the corresponding record and transmit a true copy of the record to the reviewing court within 30 days (or within fewer days if otherwise required by law) after the copy of the petition for review is served on the clerk of the lower judiciary. OCGA § 5-3-15 (a). See second bullet in NOTIFICATIONS directly below if no record exists.

### MANNER OF SERVICE OF PROCESS

- Service of a petition for review or other document shall be made in person, by mail, or electronically (if consent to electronic service is given). OCGA § 5-3-10 (a) (2).
- If service is made by mail, it shall be deemed perfected on the day it was deposited in the mail. If service is perfected by mail, three days shall be added to any deadline for mailing time. OCGA § 5-3-10 (a) (5). “Perfected” means to take all legal steps needed to complete service of process. OCGA § 5-3-3 (7).

### LOWER JUDICIARY CLERKS: NOTIFICATIONS

H.B. 916 includes the following notification requirements for lower judiciary clerks:

- If known or reasonably believed to be the case, the clerk in the lower judiciary shall notify the reviewing court if a petitioner in a criminal case is confined in jail or otherwise incarcerated when the record is transmitted from the lower judiciary to the reviewing court. OCGA § 5-3-15 (b).
- If no record is available for transmission to the reviewing court, the clerk of the lower judiciary shall notify the judge, official, or member who made the decision appealed to determine next steps. OCGA § 5-3-15 (c).
- If the clerk of the lower judiciary does not transmit the record to the reviewing court within 30 days after being served with a copy of the petition for review, the petitioner shall notify the reviewing court, which then shall order the clerk of the lower judiciary to promptly transmit the record or state the reason for the delay. OCGA § 5-3-15 (d).
- The clerk of the lower judiciary shall promptly notify each judge, official, or member of the lower judiciary who rendered the final judgment appealed of any final decision served on the lower judiciary clerk. OCGA § 5-3-18 (b).

### SUPERIOR AND STATE COURT CLERKS: NOTIFICATIONS

H.B. 916 includes the following notification requirements for reviewing court clerks:

- The clerk of the reviewing court shall promptly serve all parties and the clerk of the lower judiciary with a copy of any deadline extension granted and the motion filed to request such extension. OCGA § 5-3-11 (c).
- The clerk of the reviewing court shall serve a copy of the reviewing court’s final decision regarding a petition for review on the clerk of the lower judiciary and on all parties named in the petition for review within five days after the date the reviewing court’s final decision was rendered. OCGA § 5-3-18 (b).
- If the lower judiciary does not have a clerk, then the clerk of the reviewing court shall serve a copy of the reviewing court’s final decision on each judge, official, or member of the lower judiciary who rendered the final judgment appealed. OCGA § 5-3-18 (b).

Model Certificate of Payment of Costs for Petition for Review

IN THE [SUPERIOR/STATE] COURT OF \_\_\_\_\_ COUNTY<sup>1</sup>

STATE OF GEORGIA

_____,'	)	
	)	
Petitioner,	)	
	)	Reviewing Court Case No.:
v.	)	_____
	)	
_____,'	)	
	)	
Respondent.	)	

**CERTIFICATE OF PAYMENT OF COSTS**

Now comes the undersigned, a judge, clerk, official, member, or other designated representative of the [name of Lower Judicatory], certifying that all costs have been paid in lower judicatory case number: \_\_\_\_\_.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Lower Judicatory

<sup>1</sup> "Unless the petitioner in a civil case files an affidavit of indigence with the reviewing court stating that the petitioner is unable to pay the costs owed to the lower judicatory because of indigence, the petitioner in a civil case shall obtain and file with the reviewing court a certificate of payment of costs from the lower judicatory certifying that the petitioner has paid all costs owed to the lower judicatory. Such certificate shall be:

- (1) Filed in the reviewing court within five days after issuance by the lower judicatory; and
- (2) Signed by a judge, clerk, official, member, or other designated representative of the lower judicatory." OCGA § 5-3-16 (e).