



SUPERIOR AND STATE COURT APPELLATE PRACTICE ACT

— A Bench Card for Judges —

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 judiciary 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 judiciaries. OCGA § 5-3-2 (b) (1); 5-3-4 (b) (6). A “lower judiciary” 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 judiciary 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). 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. A Model Petition for Review in the format detailed in OCGA § 5-3-7 (e), a training video with materials, and other resources are available at: jcaoc.georgiacourts.gov/hb916.

GENERAL INFORMATION

DEFINITIONS

- “Decision” means any formal or informal adjudication, decision, determination, judgment, order, ruling, or other act of a judiciary that is judicial or quasi-judicial in nature. OCGA § 5-3-3 (3).
- “Final judgment” means a decision of a lower judiciary in a case that is no longer pending in a lower judiciary, as defined. A “final judgment” must (A) exhaust all appeals or administrative remedies in a lower judiciary; and (B) satisfy all conditions precedent to appeal under law. OCGA § 5-3-3 (4).
- “Judiciary” 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 judiciary” means any judiciary 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 who is adverse to the petitioner and a party to the underlying dispute in the lower judiciary. OCGA § 5-3-3 (11). The former term “opposite party” is eliminated. OCGA § 5-3-3 (11) also includes: a prohibition on including a judge as a “respondent;” and instructions regarding 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 judiciary” as defined to the left. OCGA § 5-3-4 (a).
- H.B. 916 (2022) 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).
- Except as provided in OCGA § 5-3-17 (g), Chapter 3 of Title 5 preempts any *conflicting* local law or any locally enacted law, ordinance, regulation, rule, or procedure governing appealing a “final judgment” to a “reviewing court.” OCGA § 5-3-4 (c).

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.

*As defined in Article 6 of Chapter 9 of Title 15 per OCGA § 5-3-3 (1).

IMPROVE ACCESS TO JUSTICE

In enacting H.B. 916 (2022), the General Assembly found “that many appeals from a lower judiciary 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). 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, judges should construe OCGA §§ 5-3-1 to 5-3-21 “broadly so as to render decisions based on the merits of each case and avoid dismissal of any case or refusal to consider any points raised therein unless such dismissal or refusal is expressly required by statute.” OCGA § 5-3-2 (c) (1).

LOWER JUDICATORIES: WHAT YOU NEED TO KNOW

ROLE OF LOWER JUDICATORY

- The role of a lower judicatory is limited to:
 - Creating and transmitting the record (OCGA §§ 5-3-14; 5-3-15);
 - Certifying that all costs in the lower judicatory are paid in a civil case (OCGA § 5-3-16 (e)); and
 - Following the instructions upon remand by the reviewing court (OCGA § 5-3-18 (a) (1)-(3)).
- Upon being served with a copy of the petition for review and unless otherwise ordered by the reviewing court, the clerk of the lower judicatory 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 judicatory. OCGA § 5-3-15 (a).
- The petitioner in a civil case shall either: obtain and file with the reviewing court a certificate of payment of costs (available at: jca-oc.georgiacourts.gov/hb916) from the lower judicatory *within five days of issuance*; or file an affidavit of indigence with the reviewing court. OCGA § 5-3-16 (e).

SUPERSEDEAS AND BONDS

- Filing a petition for review in a reviewing court shall act as supersedeas and shall suspend but not vacate a final judgment of a lower judicatory. OCGA § 5-3-17 (a).
- Effect of supersedeas:
 - *Civil Cases*: “As a general rule, in civil actions other than injunctions, a trial court, upon the filing of a [petition for review], loses jurisdiction to modify or enforce a judgment which is the subject of the appeal during the period of supersedeas.” *Davis v. Harpagon Co., LLC*, 281 Ga. 250, 253 (2006).
 - *Criminal Cases*: “The mere filing of a [petition for review] . . . does not divest the trial court of complete jurisdiction . . . [T]he filing of a [petition for review] merely deprives the trial court of its ‘power to execute the sentence.’” *Strickland v. State*, 258 Ga. 764, 765 (1988).
- If a bond is ordered by the reviewing court and the petitioner fails to comply, the supersedeas shall cease unless the petitioner files an affidavit of indigence. OCGA § 5-3-17 (d).
- *In criminal cases where a bond is required by the reviewing court*, the lower judicatory shall order that the petitioner be released from custody (for the conviction appealed) upon the giving of a bond by the petitioner. OCGA § 5-3-17 (c) (2).

THE RECORD (OCGA § 5-3-14)

- “As a matter of law, whether or not a transcript is to be prepared in a misdemeanor case initially lies within the sound discretion of the trial court. Absent a demand for a transcript prepared at the expense of the requesting party, the reporting of such a case is not demanded by law.” *Bagley v. State*, 298 Ga. App. 513, 514, (680 SE2d 565, 567) (2009).
- In civil cases and misdemeanor criminal cases, a lower judicatory may require the audio or video recording, reporting, or transcribing of the evidence and proceedings in the lower judicatory on terms prescribed by the lower judicatory. OCGA § 5-3-14 (a).
- In a civil case, a petitioner bears the burden of preparing a transcript of the proceedings in the lower judicatory at the petitioner’s expense from recollection or otherwise (e.g., a recording) only if the petitioner is financially able to pay the costs of transcribing. OCGA § 5-3-14 (b).
- In civil cases, a lower judicatory may require the parties to share the cost of reporting or transcribing the evidence and proceedings in the lower judicatory only if a party is financially able to pay for such costs. OCGA § 5-3-14 (c).
- If no party is financially able to pay for the costs of reporting or transcribing, the trial may go unreported. OCGA § 5-3-14 (c).
- Any party shall have the right to have any criminal or civil case in a lower judicatory reported or transcribed at the party’s own expense. OCGA § 5-3-14 (d).
- If the parties cannot agree regarding whether the transcript or record truly or fully discloses what transpired in the proceedings in the lower judicatory, the lower judicatory shall schedule a hearing with notice to all parties to resolve the dispute and conform the record to the truth. OCGA § 5-3-14 (k).
- The lower judicatory may transmit a supplemental record to the reviewing court. OCGA § 5-3-14 (n).
- The lower judicatory or the reviewing court may order the clerk of the lower judicatory to send up any original documents, exhibits, or other items in the case under review. The reviewing court shall return such items to the lower judicatory after the final disposition of the case. OCGA § 5-3-14 (o).

SUPERIOR AND STATE COURTS: WHAT YOU NEED TO KNOW

STANDARD OF REVIEW (OCGA § 5-3-5)

- (a) Unless de novo review of all issues is specified by law, a reviewing court shall:
- (1) Review only matters raised in the record of the proceeding in the lower judicatory;
 - (2) Accept the findings of fact and credibility of the lower judicatory unless they are clearly erroneous;
 - (3) Accept a decision regarding an issue within the sound discretion of the lower judicatory unless such a decision was an abuse of discretion;
 - (4) Determine whether the final judgment was sustained by sufficient evidence; and
 - (5) Review questions of law de novo.
- (b) A reviewing court shall conduct a de novo review of all issues only if a de novo proceeding is specified by law. A petition for review is heard *without a jury* unless a jury trial is ordered by the reviewing court and authorized by law.
- (c) A demand for a jury trial shall be filed *within 30 days after* filing a petition for review.

WHO ARE THE PARTIES?

- All parties to the proceedings in the lower judicatory are parties in the reviewing court. OCGA § 5-3-7 (c).
- Judges, officials, and members of a lower judicatory who rendered the final judgment under review shall not be named as a party, defendant, or respondent. OCGA § 5-3-7 (d).
- A petitioner shall amend a petition for review to correct a party, defendant, or respondent named in error; or the reviewing court may dismiss such persons on its own motion. OCGA § 5-3-7 (d) (1)-(2).

PROCEEDINGS MANAGEMENT

The reviewing court may issue such orders and writs as may be necessary to aid in its jurisdiction and manage court proceedings. OCGA § 5-3-9 (a). In a petition for review, superior and state court judges have the authority and duty to select the appropriate standard for review and remedy.

SUPERIOR AND STATE COURTS: WHAT YOU NEED TO KNOW (cont.)

DEADLINES AND SCHEDULING

- Unless an exception applies, a petitioner shall file a petition for review with the clerk of the reviewing court *within 30 days after*:
 - *If the lower judiciary has a clerk*: The date the final judgment in the lower judiciary is filed or recorded, whatever comes first; or
 - *If the lower judiciary does not have a clerk*: The date the final judgment in the lower judiciary is signed and notice of the final judgment has been provided to all parties. OCGA § 5-3-7 (b).
- After a petition for review is filed in the reviewing court, the reviewing court shall establish filing deadlines; and schedule any necessary proceedings or hearings. OCGA § 5-3-9 (c).
- A respondent shall file a response to a petition for review with the reviewing court *within 30 days after* being served with a copy of the petition for review. OCGA § 5-3-8 (a).
- A reply, if any, shall be filed by the petitioner *within 30 days after* being served with a copy of the respondent's response. OCGA § 5-3-8 (c).
- The reviewing court shall only grant *one* filing deadline extension *not to exceed 30 days* for the filing of a petition for review but may grant such filing deadline extensions for other documents as may be necessary to permit a just and expeditious review. OCGA § 5-3-11 (b).
- Any party requesting a filing deadline extension shall do so before the expiration of the existing filing period in effect. OCGA § 5-3-11 (a).
- 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).
- The reviewing court shall grant continuances and enter such other orders as may be necessary to permit a just and expeditious review. OCGA § 5-3-9 (b).

SUPERSEDEAS AND BONDS

- Except to the extent prohibited by law, filing a petition for review in a reviewing court shall act as supersedeas and shall suspend but not vacate the final judgment of a lower judiciary. OCGA § 5-3-17 (a).
- The lower judiciary does not play a role in bond decisions in a petition for review. Bond decisions are made by the reviewing court. OCGA § 5-3-17 (c) (1).
- A supersedeas bond is not required in a petition for review unless ordered by the reviewing court. OCGA § 5-3-17 (b)-(c).
- *In criminal cases where a bond is required by the reviewing court, the **lower judiciary** shall order that the petitioner be released from custody (for the conviction appealed) upon the giving of a bond by the petitioner.* OCGA § 5-3-17 (c) (2).
- If a bond is required by the reviewing court and the petitioner fails to comply, the supersedeas shall cease unless the petitioner files an affidavit of indigence. OCGA § 5-3-17 (d).

SHOULD A BOND BE REQUIRED?

- After a petition for review is filed, the reviewing court must decide whether to require a supersedeas bond be given by the petitioner. OCGA § 5-3-17 (b)-(c) (1).
- In a criminal case, the petitioner will indicate in their petition for review (OCGA § 5-3-7 (e) (3) (D)):
 - Whether they are confined in jail or otherwise incarcerated pending the appeal; and
 - Each convicted offense appealed and the corresponding sentence prescribed by the lower judiciary.
- The giving of a bond shall be consistent with: the U.S. Constitution; and the laws and Constitution of Georgia, including, but not limited to, OCGA § 17-6-1. OCGA § 5-3-17 (f) (5).
- A bond shall not exceed the total amount of damages, fines, fees, penalties, and surcharges imposed by the lower judiciary. OCGA § 5-3-17 (e).

POST-REVIEW PROCEDURES (OCGA § 5-3-18)

- (a) (1) After a petition for review is reviewed, the reviewing court shall render a final decision:
 - (A) Entering a judgment upon the petition for review;
 - (B) Ordering dismissal of the petition for review;
 - (C) Remanding a petition for review back to the lower judiciary with instructions; or
 - (D) A combination thereof.
- (2) If the final decision is a judgment upon the petition for review, it shall be in writing and specify whether the reviewing court is affirming, reversing, or vacating the final judgment of the lower judiciary.
- (3) If the final decision remands the petition for review back to the lower judiciary, it shall provide instructions to the lower judiciary for further proceedings.
- (b) 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 such decision was rendered.
- (c) A final decision by the reviewing court may be appealed to the appropriate appellate court (i.e., Georgia Supreme Court or Court of Appeals) as prescribed by law.