



FREQUENTLY ASKED QUESTIONS REGARDING FILING APPEALS IN THE COURT OF APPEALS OF GEORGIA

NOTE:

- (1) This information is intended for pro-se parties. There are significant filing differences between attorneys and pro-se parties. Attorneys must e-file all filings, and pro-se parties must submit paper filings.**
- (2) Parties must check the latest statutes and Court rules, as the statutes and rules may have changed since this publication. All references to “Rules” in this guide refer to the Rules of the Court of Appeals of Georgia.**

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FREQUENTLY ASKED QUESTIONS

WHAT IS AN APPEAL?

An appeal is the process in which a court's decision is formally requested to be changed. The Court of Appeals of Georgia (the "Court") will review a lower court's decision to determine whether any mistakes 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.

WHAT IS A LOWER COURT JUDGMENT OR ORDER?

A judgment or order is a ruling made by a lower court judge. A judgment is often issued at the end of a case and usually favors one of the parties. The judgment is usually written and details why the court made the decision it did.

WHAT ORDERS OR JUDGMENTS MAY BE APPEALED?

Generally, any final order of a trial court may be appealed. However, there are some exceptions. See OCGA § 5-6-34. An order that disposes of the entire case is a final order. An order that does not resolve all issues in the case is an interlocutory order. To appeal an interlocutory order, a party must obtain a Certificate of Immediate Review from the trial court and request permission to appeal by following the interlocutory application process.

With limited exceptions, this Court can review only written judgments and orders that have been filed by the trial court, so orders that have not been reduced to writing or have not been filed in the trial court are generally not appealable.

WHO CAN APPEAL?

A party who is dissatisfied with a lower-court decision or ruling may have a right to appeal. A party may appeal with or without representation by an attorney. However, it is strongly suggested that appellants obtain a lawyer to represent them. No special treatment is given to parties who represent themselves.

WHAT IS THE DIFFERENCE BETWEEN A CIVIL AND CRIMINAL CASE?

Criminal cases are cases in which the defendant has been charged with violating Georgia's criminal law. A state prosecutor, in coordination with a law enforcement agency, initiates a criminal proceeding by filing criminal charges against the defendant. Usually, the state prosecutor is an attorney from the district attorney's office in the jurisdiction in which the crime is alleged to have occurred.

Civil cases are cases in which two or more parties are in disagreement over an issue or set of issues and a lawsuit is filed in order to have the trial court resolve that conflict. Examples of civil cases include: divorces, disputes over contracts, and injury cases.

There are no major differences between the way civil cases and criminal cases are handled on appeal. Both types of cases follow the same appeals process. There are some differences in the requirements for styling documents (briefs, applications, etc.). However, the Court hears both criminal and civil cases in the same fashion.

HOW MUCH DOES IT COST TO APPEAL?

The costs of filing a direct appeal or an application are \$80 for criminal cases and \$300 for civil cases. In a direct appeal, costs must be paid by the date 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. **When an appeal is taken by application, court costs must be paid when the application is filed.** The Clerk of the Court is prohibited from receiving an application for filing without the filing fee unless (1) the pro-se applicant or appellant is incarcerated at the time, (2) the applicant or appellant files a sufficient pauper's affidavit, or (3) counsel for the applicant or appellant files a form showing counsel has been appointed to represent them. See Rule 5. If an application is granted, the appellant is not required to pay another fee to file his or her brief under the subsequent appeal. OCGA § 5-6-4.

CAN THE COURT OF APPEALS APPOINT AN ATTORNEY TO REPRESENT ME?

No. The trial court can appoint attorneys to indigent parties under some circumstances. However, the Court cannot appoint attorneys.

CAN THE COURT OR THE CLERK'S OFFICE RECOMMEND A LAWYER TO REPRESENT ME AT MY APPEAL?

No. Neither the Court nor the Clerk's office is permitted to refer parties to specific lawyers. However, the State Bar of Georgia does have a referral system that provides parties with the information they need when searching for a lawyer to represent them. The State Bar of Georgia referral service can be found online at: <http://www.gabar.org/forthepublic/findalawyer.cfm>. The State Bar of Georgia can also be reached by phone at: (404)-527-8700 or (800)-334-6865.

WHERE ARE THE RULES FOR FILING AN APPEAL?

Rules for filing an appeal in Georgia can be found at: <http://www.gaappeals.us/rules2/index.php>.

IF A PARTY WANTS TO APPEAL A TRIAL COURT'S DECISION, WHAT IS THE FIRST THING THEY SHOULD DO?

The best way to begin an appeals process is to hire an attorney for representation. However, this guide will provide general information on filing an appeal for those wishing to represent themselves. A party should also review the Court's rules and Georgia statutes on appeals.

IF A MOTION TO RECONSIDER OR OTHER POST-JUDGMENT MOTION IS FILED IN THE LOWER COURT, WHEN IS THE NOTICE FOR APPEAL DUE?

Typically, parties are required to file their notice of appeal within thirty days of the trial court's decision being filed. The filing of a motion for reconsideration in the trial court does not toll (extend) the deadline for filing a notice of appeal.

WHAT IS THE RECORD ON APPEAL?

The record is a compilation of the pleadings, other documents, and evidence filed in the trial court in a case including any motions, decisions, orders, or judgments. If a notice of appeal is filed, a party must designate the portions of the record to be prepared for review by the Court. The lower court clerk will typically not begin preparing the record until the party pays the copy cost to the court clerk. The Court accepts only lower-court records that have been certified by the lower court clerk.

WHAT IS THE DOCKETING NOTICE?

Once the Court receives the record from the trial court, the Court will docket the appeal and send a docketing notice to the parties. The appellant will then need to prepare and file his or her brief with the Court. See Rule 13.

WHAT IS A BRIEF?

A brief is a written statement that explains the argument of a party to an appeal. Each party will have an opportunity to submit a brief explaining the merits of his or her argument to the Court. The appellant files his or her brief first, after which the appellee may respond by filing his or her own brief. The State is required to file a brief in all criminal cases in which it is the appellee.

WHEN TO FILE THE BRIEF?

Once an appeal has been docketed and the parties have been notified, the appellant's brief must be filed within twenty days after the appeal is docketed. The appellee must file his or her brief within forty days after the appeal is docketed or twenty days after the appellant's brief has been filed, whichever is later. See Rule 23.

WHAT TO DO IF A BRIEF CANNOT BE FILED WITHIN THE TIME LIMIT?

If there is an issue concerning the filing a brief within the time limit, a party may file a motion for extension of time to file this brief. Using this motion, the party will explain to the Court why extra time is needed to file the brief and when he or she will be able to file the finished brief. See Rule 16. The motion must be filed in advance of the due date.

WHO DECIDES A COURT OF APPEALS CASE?

After all the necessary documents have been filed with the Court, the case will be assigned to a panel of judges (usually a group of three, but sometimes more). This panel will decide whether the decision of the trial court should be affirmed (meaning the trial court decision stands as it is), reversed, or remanded and sent back to the trial court to be reheard.

CAN NEW EVIDENCE BE PRESENTED TO THE COURT OF APPEALS THAT WAS NOT INTRODUCED TO THE TRIAL COURT?

No. Parties to cases on appeal are not allowed to introduce new evidence that was not presented to the trial court. The Court will review only the record from the trial court, i.e., only the evidence admitted in the trial court during litigation

DO PARTIES GET HEARINGS IN A COURT OF APPEALS CASE?

Unless expressly ordered by the Court, there are no mandatory hearings at the Court. However, parties may request to present oral arguments before the judges' panel assigned to their case. See Rule 28.

HOW DO PARTIES KNOW WHAT DECISION WAS MADE BY THE COURT?

Once the judges' panel has come to a decision, the panel will issue this decision in a document called an opinion and deliver the opinion to the parties in the appeal. The Court's opinion will explain how the facts of the case and the relevant law led the Court to make the decision it did.

WHEN ARE DOCUMENTS CONSIDERED FILED?

Documents are usually considered filed with the Court once they are received by the Clerk's office. Attorneys are required to file documents electronically. However, parties who are representing themselves without an attorney can consider documents they have mailed to the Court of Appeals as filed on the date that has been officially stamped on the mail by the US Postal Service. Pro-se prisoners may consider documents filed on the date they were submitted to prison officials for forwarding to the Court of Appeals if there is no postmark showing a date before the filing deadline. Motions for Reconsideration are considered filed only when they are actually received in the Clerk's office. See Rule 4 (d).

WHAT IF DUE DATES FOR FILING DOCUMENTS FALL ON WEEKENDS OR HOLIDAYS?

If a due date falls on a weekend or holiday, the documents may be filed on the next business day. See Rule 3.

HOW DO I ASK THE COURT TO DO SOMETHING OR ASK THE COURT TO ISSUE AN ORDER?

A request to the Court for action to be taken must be submitted in the form of a motion. Review the section in the Citizen's Guide titled "Motions" for more direction.

HOW LONG WILL IT TAKE FOR THE COURT TO MAKE A DECISION?

All appeals are reviewed in the order in which they are filed with the Court. The Court of Appeals is required to decide cases by the end of the term that the case was docketed or the term immediately following. Ga. Const. of 1983, Art. VI, Sec. 9, Par. 2. This is generally six to eight months after a case is docketed.

WHAT SHOULD A PARTY DO IF THEY DO NOT LIKE A DECISION MADE BY THE COURT OF APPEALS?

If a party disagrees with a ruling made by the Court, he or she has two options. First, the party can file a motion for reconsideration, asking the Court to review the appeal again. The Court must physically receive a motion for reconsideration by 4:30 p.m. on the tenth day after the Court issued its opinion. See Rule 37. The Court may shorten this deadline.

Second, a party disagreeing with the Court's decision may also file a notice of intention to petition for certiorari. This document notifies the Court that the filing party is requesting that the case be heard by the Supreme Court of Georgia. A party may still file this notice after they have filed a motion for reconsideration, but a party is not required to file the motion in order to file the notice of petition for certiorari. See Rule 38.