



FREQUENTLY ASKED QUESTIONS ABOUT FILING APPEALS

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WHAT IS AN APPEAL? An appeal is the process by which a party asks the appellate court to change a lower court's decision. The Court of Appeals of Georgia 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 must be written and filed with the trial court clerk to be appealable, and may explain 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 directly appealed, or the losing party may apply for permission to file an appeal. See OCGA §§ 5-6-34, 5-6-35. An order that does not end 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.

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, we strongly encourage parties to obtain a lawyer to represent them in this complicated process. The Court gives no special treatment to parties who represent themselves.

WHAT IS THE DIFFERENCE BETWEEN A CRIMINAL AND A CIVIL CASE?

In criminal cases, the State has charged the defendant with violating a criminal law. A state prosecutor, usually a lawyer from the office of the District Attorney or Solicitor in the county where the crime was allegedly committed, initiates a criminal proceeding by filing charges against the defendant.

In civil cases, two or more parties disagree with each other over things like divorces, contracts, or injuries, and one party files a lawsuit against the other party so a judge or a jury can decide who is right and whether one party owes money to the other.

Criminal and civil cases are basically handled the same way during the appeal process.

HOW MUCH DOES IT COST TO APPEAL?

A direct appeal or an application costs \$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 before the appellant's brief is filed, the appellant must still pay the filing fee. Costs are the same for an application, but must be paid when the application is filed. The Clerk of the Court is prohibited by law from filing an application without the required filing fee unless (1) the self-represented applicant or appellant is in jail or prison at the time, (2) the applicant or appellant files a sufficient pauper's affidavit, or (3) counsel for the applicant or appellant shows that he or she

has been appointed to represent that party. See Rule 5. If an application is granted, the appellant is not required to pay another fee to file his or her brief in the subsequent appeal. OCGA § 5-6-4.

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

No. Only the trial court can appoint attorneys to financially challenged parties under some circumstances. This Court cannot appoint attorneys.

CAN THE COURT OR THE CLERK'S OFFICE RECOMMEND A LAWYER TO REPRESENT ME IN 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 has a referral service that can be found online at: www.gabar.org/forthepublic/findalawyer.cfm. The State Bar of Georgia can also be reached by telephone at: (404) 527-8700 or (800) 334-6865.

WHERE ARE THE RULES FOR FILING AN APPEAL?

Rules for filing an appeal in the Georgia Court of Appeals can be found on the Court's website at: 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. If you cannot hire a lawyer, this guide will provide general information on how to file an appeal. Parties should also review all of the Court's rules and any Georgia statutes related to appeals.

IF A MOTION TO RECONSIDER OR OTHER POST-JUDGMENT MOTION IS FILED IN THE LOWER COURT, WHEN IS THE NOTICE OF 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, judgments, and transcripts of trials, hearings, and depositions. When a notice of appeal is filed, the appealing party must identify which portions of the trial court record should be omitted (left out) of the record sent to the appellate court. The lower court clerk typically will not begin preparing the record until the appealing party pays the copying costs. The Court of Appeals accepts only lower court records that have been certified by the lower court clerk. Parties may not file evidence of any kind directly with the Court of Appeals.

WHAT IS THE DOCKETING NOTICE?

Once the Court receives the record from the trial court, the Court will docket the appeal, assign a case number, and send a notice to the parties that tells them the appeal has been docketed, when their briefs are due, and other calendaring information. 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 has a chance to submit a brief explaining the merits of his or her argument to the Court. The appellant is required to file a brief or risk losing the appeal for that reason, and files his or her brief first. The appellee may respond by filing his or her own brief, but only the State is required to file a brief in all criminal cases in which it is the appellee.

WHEN TO FILE THE BRIEF?

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?

A party who cannot file a brief in time may file a motion asking this Court for more time to file it. The party explains in the motion why extra time is needed to file the brief and asks for a specific date or length of time to file the brief. See Rule 16. The motion must be filed in later than the date the brief is due.

WHO DECIDES A COURT OF APPEALS CASE?

After the case is docketed in the Court, the case is assigned to a panel of three judges. 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 (sent back to the trial court for more proceedings).

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 to the Court of Appeals that was not presented to the trial court. The Court will review only the documents in the record from the trial court.

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 ask 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 a written 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. Paper documents from self-represented prisoners are considered filed on the postmark date of the envelope containing the document, or the Court 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 date on the envelope.

Motions for Reconsideration are considered filed only when they are actually received in the Clerk's Office. See Rule 4.

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

If a due date falls on a weekend or holiday, the due date extends to 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 to take action must be submitted in the form of a motion. Review Section 8 of this 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 following the term to which the case is docketed. Ga. Const. of 1983, Art. VI, Sec. 9, Par. 2. This time frame 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?

A party who disagrees with the Court's decision 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 file a notice of intention to petition for certiorari. This document notifies the Court that the filing party intends to ask the Supreme Court of Georgia to hear the appeal. A party may still file this notice after they have filed a motion for reconsideration, but a motion for reconsiderations is not required before a party can file a notice of intention to petition the Supreme Court. The party must then file a petition in the Supreme Court and on the same day notify the Court of Appeals that it has done so. See Rule 38.

For more information, please see the document titled *A Citizens' Guide to Filing Appeals*, which is posted on this Court's website.