Record Appendices in the Appellate Courts – Guide to the New Three-Step Procedure

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Background

When a case is appealed, the appellate court must have access to the trial court's record. There are a variety of ways of making that happen, and technology is creating additional options. For many years, the procedure in Georgia had been that the trial-court clerks were charged with copying and certifying the record. That procedure is set out in the Appellate Practice Act at O.C.G.A. § 5-6-43. The clerks are authorized to charge a statutory fee for that service. For many years that fee had been $1.50 per page. O.C.G.A § 15-6-77 (g) (12).

While $1.50 was a lot for a single photocopy, it represented a relatively small part of the total cost of an appeal. Things changed at the end of the last legislative session. A bill that updated the various fees charged by the state increased the appellate records fee to $10 per page. O.C.G.A § 15-6-77 (g) (12). The effect would have been to roughly double the already-considerable cost of an appeal, effectively cutting off access to the appellate courts.

Recognizing that the situation was an emergency, the Supreme Court and the Court of Appeals adopted rules (adapted from a proposal I drafted), that offer an alternative. The alternative is party-created record appendices. The procedure for party-created appendices is set out at Supreme Court Rules 67 and 69. Court of Appeals Rule 17 simply incorporates the Supreme Court rules by reference. ("Notwithstanding anything to the contrary in these rules, this Court will accept for consideration on the merits of any appeal any record or substitute therefor which the Supreme Court of Georgia accepts under its rules.")

appellate record. If any of those transcripts have already been filed, the notice of appeal should point that out.

Step Two – Designation. The rules contemplate a single record appendix, prepared after consultation between the parties. Along with the service copy of the notice of appeal, the appellant is to serve the appellee with a designation of the parts of the record to be included in the record appendix. The appellee then has 15 days to serve a designation of additional parts.

The rules go on to admonish parties not to "engage in unnecessary designation of parts of the record." And there is an existing procedure for shifting costs to an appellee who designates unnecessary parts. Jacques v. Murray, 290 Ga.App. 334 (2), 336, 659 S.E.2d 643, 645 (2008). But as those costs will now be competitive commercial rates, it will rarely make sense to invoke that procedure.

Any disputes as to correctness of the record must be resolved by the trial court. Again there is an existing procedure. O.C.G.A. § 5-6-41 (f).

Step Three – Appendix. The appendix itself must be "transmitted" to the clerk of the appellate court within 5 days after the transcript is filed with the trial-court clerk. The Supreme Court has announced that, for this purpose, "transmitted" is synonymous with "filed" as the latter term is defined in Supreme Court Rule 13. If no transcript is filed, the appendix must be transmitted to the appellate court within 30 days after the notice of appeal is filed. Note that there is no provision granting appellants the longer of the two periods: a prompt court reporter will compel an appellant to act promptly. Similarly, if the transcript was filed before the notice of appeal, the appellant should comply with the five-day deadline.

These rules have been adapted from the existing statutory deadlines for records prepared by trial-court clerks. O.C.G.A. § 5-6-43 (b). Of course for the trial-court clerks, those deadlines have been largely toothless.

Rule 69 specifies the contents of the appendix and the sequence in which those materials are to appear. The Supreme Court has announced that all documents should be file-stamped. As service copies are often not file stamped, this is a significant logistical challenge.

First, Rule 69 (a) requires an index. The index is to include page references and dates of filing. The Supreme Court has posted a sample index.In order to supply the required page references, it is necessary to Bates-stamp the pages of the appendix. A Bates stamp is a mechanical device that stamps out consecutive

Materials Excerpted from:

McFadden, Brewer & Sheppard's, Georgia Appellate Practice
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Chapter 3. The Structure of the Other Trial Courts and Administrative Tribunals

§ 3:8. Juvenile courts—Generally

§ 3:9. Juvenile courts—Associate juvenile court judges

Chapter 11. Post-Judgment Motions

§ 11:9. Post-judgment motions in juvenile courts

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Appeals from final judgments of the **Juvenile** Courts are taken to the Georgia appellate courts in the same manner as appeals from the Superior Courts.[21] Finality is as defined in the Appellate Practice Act.[22] An adjudication order is not final without a dispositional order.[23] An order authorizing county authorities to cease reunification efforts is a dispositional order, and thus a final order subject to appeal, despite the pendency of the action as to other matters.[24] An order terminating a temporary guardianship is not a final order where no new guardian is appointed.[25] A transfer order to Superior Court is not final or appealable unless it finally disposes of an issue such as **juvenile** status.[26] There is, further, no supersedeas except in the discretion of the **Juvenile** Court judge.[27]

Appellate review of a final order in a deprivation proceeding is taken by direct appeal, not discretionary application.[28] Appeals of proceedings involving termination of the pregnancy of an unemancipated minor are subject to expedited appeal and preservation of anonymity.[29]

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[FN1] In re Tidwell, 279 Ga. App. 734, 632 S.E.2d 690 (2006).

[FN2] O.C.G.A. § 15-11-28(a)(1). The **Juvenile** Court does not have jurisdiction over a custody dispute among private parties where the child is not within a category listed in the statute. In re K.R.S., 253 Ga. App. 678, 560 S.E.2d 292 (2002); In Interest of B.C.P., 229 Ga. App. 111, 493 S.E.2d 258 (1997). See also In re J.T.D., 242 Ga. App. 243, 529 S.E.2d 377 (2000) (jurisdiction when delinquent **juvenile** turns age 17).

[FN3] O.C.G.A. § 15-11-28(a)(2). See In re M.C.J., 242 Ga. App. 852, 531 S.E.2d 404 (2000) (termination of incarcerated father's parental rights). In re K.E.P., 269 Ga. App. 700, 605 S.E.2d 114 (2004) (termination petition by father against mother).

[FN4] O.C.G.A. § 15-11-28(b). See In re A.B.S., 242 Ga. App. 277, 529 S.E.2d 415 (2000) (transfer of criminal prosecution; **juvenile** not subject to involuntary commitment). On transfers from **Juvenile** Court to Superior Court, see State v. Sullivan, 237 Ga. App. 677, 516 S.E.2d 539 (1999).

State v. Ware, 258 Ga. App. 564, 574 S.E.2d 632 (2002). The Superior Court may not transfer a case to the **Juvenile** Court once the State has elected to proceed in the Superior Court. State v. Henderson, 281 Ga. 623, 641 S.E.2d 515 (2007).

[FN5] In re W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004).

[FN6] O.C.G.A. § 15-11-28(e).

[FN7] Snyder v. Carter, 276 Ga. App. 426, 623 S.E.2d 241 (2005).

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cerned, with due regard for the possibility that some counter-arguments exist for application of O.C.G.A. § 9-11-5(e) if the judgment were filed with the Juvenile Court judge.

[FN23] In Interest of G.C.S., 186 Ga. App. 291, 367 S.E.2d 103 (1988); M. K. H. v. State, 132 Ga. App. 143, 207 S.E.2d 645 (1974).

[FN24] In Interest of S.A.W., 228 Ga. App. 197, 491 S.E.2d 441 (1997).

[FN25] In re M.B.B., 241 Ga. App. 249, 526 S.E.2d 76 (1999).

[FN26] Fulton County Dept. of Family & Children Services v. Perkins, 244 Ga. 237, 259 S.E.2d 427 (1978). See J. T. M. v. State, 142 Ga. App. 635, 236 S.E.2d 764 (1977) (criminal prosecution).

[FN27] O.C.G.A. § 15-11-3.

[FN28] In Interest of J.P., 267 Ga. 492, 480 S.E.2d 8 (1997) (apparently rejecting dicta that might require the filing of a discretionary appeal from a "custody order incident to deprivation proceedings"), aff'g 220 Ga. App. 895, 470 S.E.2d 706 (1996).

[FN29] O.C.G.A. § 15-11-114(e).

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[FN3] O.C.G.A. § 15-11-21(b), (c).

[FN4] O.C.G.A. § 15-11-21(c). The statutory language is problematic because it refers to "any case or class of cases," and then in the empowering language refers only to "such case." This presumably will be read to permit the Judge's determination to extend to "classes of cases."

[FN5] O.C.G.A. § 15-11-21(c).

[FN6] O.C.G.A. § 15-11-21(d).

[FN7] O.C.G.A. § 15-11-21(e).

[FN8] In Interest of M.E.T., 197 Ga. App. 255, 398 S.E.2d 30 (1990).

[FN9] O.C.G.A. § 15-11-21(e).

[FN10] O.C.G.A. § 15-11-21(d).

[FN11] O.C.G.A. § 15-11-9.1.

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[FN6] See § 11:1 supra.

[FN7] In Interest of H.A.M., 201 Ga. App. 49, 410 S.E.2d 319 (1991).

[FN8] In re B.S.H., 236 Ga. App. 879, 882, 514 S.E.2d 70, 73 (1999).

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