**SUPERIOR COURT APPEALS - EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am Tain Kell.*

Loyal listeners know that we always ask for topic suggestions for future episodes in every episode we record. And you have been kind enough to send us some really good ideas.

*For example, James R. Argo, Jr. sent an e-mail to* [*goodjudgepod@gmail.com*](mailto:goodjudgepod@gmail.com) *with an idea which we are using today.*

Shout out to Mr. Argo!

*Seriously, we really appreciate the episode ideas and hope you keep them coming!*

We know that most of our episodes are incredibly exciting and keep you on the edge of your seat with anticipation.

*Yeah, right!*

ANYWHO—this episode may be less enthralling – but it is important and contains information that judges and lawyers really need to know because it addresses a recent change in the law.

*Let’s not throw any more wet blankets on this episode and just jump right in.*

During our winter 2023 seminar for judges, FOP Judge Robert McBurney was kind enough to present on a topic that we are going to use today

As usual, we are stealing from our colleagues and sharing our “secret meeting” info with you, our loyal listeners

Loyal listeners are aware of the “shout out to avoid claim of plagiarism” philosophy we have here at the Good Judge-Ment Podcast

Today is no different – shout our to Judge McBurney

**SSCAPA EFFECTIVE JULY 1, 2023**

Change in the law, effective July 1, 2023

Applies to Petitions for Review filed on or after July 1, 2023, regardless of when the underlying case was tried.

HB 916 was passed by the Georgia Legislature – and it is 55 pages long!

This bill has a nickname already – the short title is the “Superior and State Court Appellate Practice Act.”

SSCAPA – (yet another acronym)

Complete rewrite to several sections of the Appellate Code dealing with appeals from any “lower adjudicatory”

Mainly a rewrite of Title 5, Chapter 3 of the O.C.G.A. If you want to find this law, all you need to do is look in O.C.G.A. § 5-3-1 *et. seq*.

And this new law completely changes how appeals are handled from “lower adjudicatories”

**WHY?**

You may ask yourself why the Legislature decided to rewrite the appellate code

Honestly, if you have ever presided over one of these types of appeals or represented a client who wanted to file an appeal, you probably already know the answer.

The prior process was a mess! In SSCAPA, the Legislature actually answered the question more eloquently than our off hand answer (i.e. it was a colossal mess)

O.C.G.A. § 5-3-2 includes legislative findings – and indicates that many appeals from a lower adjudicatory to a superior or state court “result in dismissal on complex procedural grounds and not a decision on the merits”

According to the Legislature, SSCAPA was intended to provide a process or procedure based upon a “petition for review” and eliminated the writ of certiorari process in this context

Certiorari is a hard word to say so that’s a good thing

IMPORTANT – THAT DOES ***NOT*** MEAN that writ of certiorari is eliminated in the context of appeals to the Supreme Court or the Court of Appeals – this change only applies to appeals to superior and state courts!

**“LOWER ADJUCATORY”**

You may also be asking yourself, “Hold up! What does the term “lower adjudicatory” mean?”

We are glad you asked! Defined in O.C.G.A. §§ 5-3-3(5) and (6)

(5)“Judicatory” means any court, official, board, tribunal, commission, municipal or county authority, council, or similar body exercising judicial or quasi-judicial powers authorized by law. The term ‘judicatory’ shall include an arbitrator, administrative law judge, mediator, or similar adjudicator authorized by law to act on behalf or at the request of any public official or body.

This definition will include courts such as Magistrate Courts, etc. but will also include bodies such as Worker’s Compensation Board, something heard by an ALJ, etc.

(6) “Lower judicatory” means any judicatory:

(A) Inferior in authority to the superior and state courts; and

(B) Subject to the appellate jurisdiction of the superior or state courts as provided by the laws and the Constitution of this state.

**SSCAPA DOES NOT EXPAND/CONTRACT OUR APPELLATE JURISDICTION**

SSCAPA did not really change any of the jurisdiction or authority of superior or state courts to hear appeals – it merely changed the ***process*** to be followed when a party wants to appeal from certain courts

Superior Courts have no appellate jurisdiction over State Courts[[1]](#endnote-1) and vice versa

Additionally, neither superior or state courts have any appellate jurisdiction over

1. Juvenile Courts
2. Municipal Court of Columbus[[2]](#endnote-2)
3. Civil Court of Macon-Bibb County
4. Civil Court of Richmond County
5. Georgia State-wide Business Court
6. Civil case in an Article 6 Probate Court
7. An order appointing a temporary administrator;
8. Any other court from which an appeal directly to the Court of Appeals or Supreme Court is authorized[[3]](#endnote-3)

Again, SSCAPA does not expand or contract our appellate jurisdiction[[4]](#endnote-4) – only changes the process

Some of our listeners may be asking themselves, “What is a civil court?” Well, there are only 2 of them remaining in Georgia – Macon-Bibb and Richmond. They have authority to conduct jury trials and they have a monetary jurisdictional limit

Likewise, some of you may not be familiar with an Article 6 Probate Court. If you do not know what an Article 6 Probate Court is, you have not been with the Good Judge-Ment Podcast for all of our episodes because we discussed this very topic with FOP’s from Probate Court

O.C.G.A. § 15-9-120(2) “a probate court of a county having a population of more than 90,000 persons according to the United States decennial census of 2010 or any future such census in which the judge thereof has been admitted to the practice of law for at least seven years.”[[5]](#endnote-5)

You know, we are assuming our listeners are asking themselves a whole bunch of questions today. Have you noticed?

**PETITION FOR REVIEW REPLACES WRIT OF CERT**

A “petition for review” replaces any writ of certiorari, or other writs or notice of appeal

The statute says that a “petition for review” is “any request for review of a final judgment”[[6]](#endnote-6)

Implicit in that broad definition is that we are not to get lost in technicalities of the form of the petition for review – remember the legislative intent that they do not want appeals dismissed on “complex procedural grounds”

That ***does not*** mean that there are not time limits or other requirements that should be ignored – instead understand that the Legislature wants judges of superior and state court to decide these appeals on the merits and not get hung up on technicalities.

SSCAPA applies to final judgments and is defined in the statute.[[7]](#endnote-7)

The litigants must have exhausted all appellate remedies available in the lower adjudicatory and have satisfied all conditions precedent to appeal

McBurney gave a good example – assume the “body” was something like a planning and zoning board. The litigants did not like the decision of the board. Before that case can be filed in superior or state court, the litigants might have to “appeal” to the County Commission or similar. Exhausting those remedies in the “judicatory” is a prerequisite to the appeal being “ripe” for our appellate jurisdiction.

**TIME LIMITATIONS**

Petition for Review must be filed within 30 days of the date of final judgment

As noted by McBurney, there is a fairly common type of appeal that may not be “harmonized” with this 30 day requirement. Appeals from a dispossessory (eviction) action. Under O.C.G.A. § 44-7-56, the parties have 7 days from the date of the final judgment to file an appeal in a dispossessory action.

To make this all as clear as mud, you will note that O.C.G.A. § 44-7-56 was amended within HB 916 to reference SSCAPA (“Any judgment by the trial court shall be appealable pursuant to Chapters 3, 6, and 7 of Title 5”)[[8]](#endnote-8) – BUT, it did not change the 7 day time deadline to file the appeal.[[9]](#endnote-9) This might be interesting to watch on appeal if you are involved in these sorts of cases.

**SERVICE OF PETITION FOR REVIEW**

Must serve petition for review on all parties and file it with the Clerk of the reviewing court[[10]](#endnote-10)

Any judge or other decision-maker is NOT to be listed as a party to the appeal (so you do not list all of the county commissioners, etc.)[[11]](#endnote-11)

Respondent has 30 days to respond

And if the appeal is a de novo proceeding, response must include any counterclaims, cross-appeals or 3rd party claims

**FORM OF PETITION FOR REVIEW/ALLOW FOR AMENDMENT IF DEFICIENCIES**

There is a form that explains what is to be included within the Petition for Review.[[12]](#endnote-12)

There is an entire and exhaustive provision relating to what is included in the record and how the record below is to be recreated if the adjudicatory does not have a transcript

Deficiencies in the Petition for Review should not be dismissed – instead, the appellate court must inform the party on how the petition for review is deficient

**LIMITED ABILITY TO DISMISS APPEAL UNDER SSCAPA**

We can only dismiss without review if:

1. Petition for Review is not filed within time limitation
2. Reviewing court lacks jurisdiction (transfer if wrong county/court – don’t dismiss)
3. Question raised is now moot
4. Absence of justiciable controversy
5. Failure to prosecute
6. Failure of petitioner to comply with SSCAPA after court rule/order[[13]](#endnote-13)

You cannot dismiss for pleading defects – must give petitioner “reasonable opportunity to amend”[[14]](#endnote-14)

**STANDARD OF REVIEW**

If the appeal does not require a de novo proceeding:

1. Review only the matters raised in the record below;
2. Review findings of fact and credibility determinations for clear error (nor merely a “bad call” by lower adjudicatory)
3. Any decision within the discretion of the lower adjudicatory reviewed for “abuse of discretion”
4. Whether there was sufficient evidence present
5. Review questions of law de novo[[15]](#endnote-15)

**JURY TRIALS**

Only required if it is a de novo appeal and a jury trial is authorized by law.

Party wanting a jury trial must request it within 30 days of filing Petition for Review.[[16]](#endnote-16)

Here is where the language of the new statute gets a little fuzzy

O.C.G.A. § 5-3-5(b):

“(b) A reviewing court shall conduct a de novo proceeding under this chapter if a de novo proceeding is specified by law. ***Cases reviewed under this subsection shall be heard by the reviewing court without a jury unless a jury trial is ordered by the reviewing court and authorized by law***.”

This can be one of those “you make the call” moments (because there is no appellate cases on this point)

If the trial judge does not have the authority to deny a request for a jury trial, why add the statutory language “unless a jury trial is ordered by the reviewing court?”

There may be some question whether the judge can deny a demand for jury trial if timely made – but our reading suggests that the judge can deny a request for a jury trial in a de novo proceeding

**CONSTRUE BROADLY**

Within the statute itself, the Legislature indicated:

1. that SSCAPA should be construed broadly so that decisions are based on the merits and avoid dismissal unless that dismissal is expressly required
2. Construe Petitions for Review according to their substance and not merely their style or form
3. Do not construe SSCAPA to expand the limited appellate jurisdiction of superior and state courts[[17]](#endnote-17)

**APPEALS THAT ARE DE NOVO VS. THOSE THAT ARE NOT**

This statutory change is requiring us to answer a question we have spent our entire career avoiding – which appeals are de novo and which are not?

Wouldn’t it be great if there was a list of the types of cases that are de novo to superior or state court and those that are not?

Yeah, we looked for that list too. And there is not one.

Please do not take the attached chart as gospel or consider it as exhaustive – instead consider this is a list of statutes and/or cases where it was held that an appeal was de novo when appealed to superior or state court

The larger point is that there are literally hundreds of different departments or boards who have decision-making authority and the appellate jurisdiction over those matters are assigned to superior or state court.

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| --- | --- | --- |
| **APPEALS THAT ARE DE NOVO AND THOSE THAT ARE NOT** | | |
| **TYPE OF CASE** | **DE NOVO OR NOT** | **AUTHORITY** |
| BOARD OF EQUALIZATION (TAX APPEALS) | DE NOVO | O.C.G.A. § 48-5-311(g)(3) |
| CONDEMNATION | DE NOVO | O.C.G.A. § 22-3-44  O.C.G.A. § 22-2-112  O.C.G.A. § 22-2-136  O.C.G.A. § 22-2-80  O.C.G.A. § 32-3-16 |
| WORKER’S COMP | NOT DE NOVO | O.C.G.A. § 34-9-105(c)[[18]](#endnote-18) |
| ATHLETIC TRAINER LICENSE | DE NOVO | O.C.G.A. § 43-5-12 |
| GA. ADMINISTRATIVE PROCEDURES ACT | ? | O.C.G.A. § 50-13-19 |
| REVOCATION OF BOAT REGISTRATION OR ABANDIONED VESSELS | DO NOVO | O.C.G.A. § 52-7-72.1  O.C.G.A. § 52-7-71 |
| APPEALS OF TRAFFIC CONVICTIONS IN MUNICIPAL AND PROBATE COURTS | NOT DE NOVO | O.C.G.A. § 40-13-28 |
| APPEALS FROM MAGISTRATE COURT CIVIL CASES | DE NOVO | O.C.G.A. § 15-10-41(b)(1) [[19]](#endnote-19) |
| REVOCATION OF RIGHT TO TRANSACT BUSINESS BY SEC. OF STATE TO FOREIGN EMC | DE NOVO | O.C.G.A. § 46-3-523 |
| SUSPENSION FROM TOBACCO BOARD OF TRADE | DE NOVO | O.C.G.A. § 10-4-176 |
| DECISIONS OF COUNTY CODE ENFORCEMENT BOARDS | DE NOVO | O.C.G.A. § 36-74-28 |
| GRADUATED SANCTIONS OF PROBATIONERS | INITIALLY NOT DE NOVO BUT CAN BE CONVERTED TO DE NOVO IN DISCRETION OF COURT | O.C.G.A. § 42-8-23 |
| REVOCATION OF LICENSE OF OPTICIANS | DE NOVO | O.C.G.A. § 43-29-13 |
| DECISION OF ARBITRATOR IN LEMON LAW CASE INVOLVING VEHICLE | DE NOVO | O.C.G.A. § 10-1-787 |
| APPOINTMENT OF GUARDIAN BY PROBATE JUDGE (OTHER THAN ATRICLE 6 PROBATE COURT) | DE NOVO | O.C.G.A. § 29-4-70 |
| APPOINTMENT OF CONSERVATOR BY PROBATE JUDGE (OTHER THAN ARTICLE 6 PROBATE COURT) | DE NOVO | O.C.G.A. § 29-5-110 |
| DECISION OF INSURANCE COMMISSIONER | DE NOVO | O.C.G.A. § 33-13-15[[20]](#endnote-20)  O.C.G.A. § 33-2-28 |
| REVOCATION OF NOTARY PUBLIC | DE NOVO | O.C.G.A. § 45-17-15 |
| REFUSAL TO APPOINT A PERSONAL REPRESENTATIVE FOR INDIVIDUAL RECEIVING PUBLIC ASSISTANCE | DE NOVO | O.C.G.A. § 49-4-172 |
| REVOCATION OF AUTHORITY TO TRANSACT BUSINESS OF FOREIGN CORPORATION BY SECRETARY OF STATE | ? | O.C.G.A. § 14-2-1532[[21]](#endnote-21) |
| REVOCATION OF LICENSE OF EMT | DE NOVO | O.C.G.A. § 31-11-36 |
| ACTIONS BY SECRETARY OF STATE AGAINST DOMESTIC CORPORATION | DE NOVO | O.C.G.A. § 14-4-24 |
| DISPOSITION OF UNCLAIMED PROPERTY | NOT DE NOVO | O.C.G.A. § 44-12-221 |
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**CONCLUSION**

That is a wrap on this episode dealing with SSCAPA

*Make sure that you consult O.C.G.A. § 5-3-1 et. seq. if you have an appeal after July 1, 2023.*

The process and procedure has radically changed with the passage of HB 916

*But the good news is that the statute did not expand or contract the appellate jurisdiction of superior or state court.*

Shout out to James Argo for the idea that we received via a very kind e-mail sent to [goodjudgepod@gmail.com](mailto:goodjudgepod@gmail.com)

*Would you like to hear your idea for an episode discussed by Dumb and Dumber here on the podcast? Send us an e-mail, just like Mr. Argo did!*

Check out our episode notes on goodjudgepod.com – we have the citations to authority listed there. So Tain, why don’t you educate us a bit to wrap up today.

*Usually, we tell a story about music trivia here at the end of an episode. But today’s episode was a little “heavy” so I thought it would be more fun to see if you knew a bunch of little, random facts about a few pop superstars.*

*For example, Alicia Keys is an amazing pianist and signer. Do you know her real name? [wait] Alicia Augello Cook. Wade once went to Las Vegas to see Bruno Mars. Do you know his real name? [wait] Peter Gene Hernandez.*

*Ok, one for our more seasoned listeners. You all know that Sting was the front man for the legendary band, The Police. His real name was Gordon Matthew Thomas Sumner. Now for the real question about Sting – why is he called Sting? [wait] Because when he first started out, he was in a band called the Phoenix Jazzmen and he regularly wore a yellow and black striped sweater – kind of like a bumble bee. Hence the nickname Sting. I guess you could say that Sting “stuck.”*

1. O.C.G.A. § 5-3-4(b). [↑](#endnote-ref-1)
2. Special statute from 1905 that established the Municipal Court of Columbus as a court of record with appeals to Court of Appeals. [↑](#endnote-ref-2)
3. O.C.G.A. § 5-3-4(b). [↑](#endnote-ref-3)
4. O.C.G.A. § 5-3-2(c). [↑](#endnote-ref-4)
5. Without getting too far into the weeds on an Article 6 Probate Court, understand that once a county’s population exceeds 90,000, the judge must be a lawyer and must have been practicing law for at least 7 years. The sitting judge, if he/she is not a lawyer, does not lose his/her seat following the census. However, any subsequent judge of that Probate Court must be a lawyer, etc. [↑](#endnote-ref-5)
6. O.C.G.A. § 5-3-3(9). [↑](#endnote-ref-6)
7. O.C.G.A. § 5-3-3(4). [↑](#endnote-ref-7)
8. O.C.G.A. § 44-7-56(a). [↑](#endnote-ref-8)
9. O.C.G.A. § 44-7-56(b)(1). [↑](#endnote-ref-9)
10. O.C.G.A. § 5-3-7(B) [↑](#endnote-ref-10)
11. O.C.G.A. § 5-3-7(d). [↑](#endnote-ref-11)
12. O.C.G.A. § 5-3-7(e). [↑](#endnote-ref-12)
13. O.C.G.A. § 5-3-12(a). [↑](#endnote-ref-13)
14. O.C.G.A. § 5-3-12(b) and (c). [↑](#endnote-ref-14)
15. O.C.G.A. § 5-3-5(a). [↑](#endnote-ref-15)
16. O.C.G.A. § 5-3-5(c). [↑](#endnote-ref-16)
17. O.C.G.A. § 5-3-2(c). [↑](#endnote-ref-17)
18. The statute provides that appeals must be filed within 20 days of judgment of the Board. O.C.G.A. § 34-9-105(b). [↑](#endnote-ref-18)
19. O.C.G.A. § 15-10-41(b)(1). Does not apply to default judgment or to dismissals without prejudice – no appeal from those decisions. However, review for postjudgment motion to vacate or similar is made via petition for review to the superior court or state court under the SSCAPA rules. [↑](#endnote-ref-19)
20. Appeals must be filed in Superior Court of Fulton County. [↑](#endnote-ref-20)
21. Appeals must be filed in Superior Court of Fulton County. [↑](#endnote-ref-21)