



Professional Perspective

# Post-Judgment Challenges & the Right to Appeal

Nelofar Agharahimi, Swift Currie

**Bloomberg  
Law**

[Read Professional Perspectives](#) | [Become a Contributor](#)

Reproduced with permission. Published June 2021. Copyright © 2021 The Bureau of National Affairs, Inc.  
800.372.1033. For further use, please contact [permissions@bloombergindustry.com](mailto:permissions@bloombergindustry.com)

# Post-Judgment Challenges & the Right to Appeal

Contributed by [Nelofar Agharahimi](#), Swift Currie

Post-judgment procedures are easy to overlook when developing a litigation strategy, drafting pleadings, taking depositions, and defending a client at trial. But it is also critical to consider post-judgment procedures as appellate rules and procedures can truly change the outcome of a case. This article highlights different types of appeals, the benefits and disadvantages of discretionary appeals, and how to follow the proper procedures when filing appeals. Being mindful of these considerations is necessary to ensure a smooth transition from trial to appeal.

## What Kind of Appeal?

### Discretionary Appeals vs. Appeals as a Matter of Right

In most jurisdictions, including federal court, there are typically two types of appeals: discretionary appeals and appeals as a matter of right. An appeal as a matter of right is guaranteed by statute or an underlying constitutional or legal principle, and must be heard by the higher court if demanded by the losing party. A discretionary appeal is one that the higher court may, but is not required to, consider. In the Supreme Court, at both federal and state level, review of most cases is available only if the court exercises its discretion and grants a writ of certiorari, which requires certain criteria is met before the court will spend time reviewing the lower court's decisions.

#### **State Appeals Rules Vary**

Each state has its own state court system and determines whether its appellate jurisdiction is based on appeals as a matter of right or discretion. Those determinations are usually set forth in statutes.

The nature and procedural posture of each case influences whether the appeal is a matter of right or discretionary. In Georgia, cases where the court has discretion to review are set out in O.C.G.A. 5-6-35(a) and range from appeals requesting review of the State Board of Workers' Compensation decisions, review of judgments or orders in divorce and alimony, review of dispossession warrants in which the only issue to be resolved is the amount of rent due (and such amount is \$2,500 or less), review of orders revoking probation, and cases involving a judgment of \$10,000.

They may also involve orders denying post-judgment motions for new trial or to set aside judgments, orders related to temporary restraining orders, appeals from awards of attorney fees or expenses, and orders terminating parental rights. Discretionary applications are only granted when reversible error appears to exist or if the establishment of precedent is desirable.

In some jurisdictions like Michigan, the court of appeals may also exercise discretionary jurisdiction in reviewing judgments or orders when an appeal of right could have been taken but was not timely filed. M.C.R. 7.203(B). Thus, unlike in other jurisdictions, appellants may still have a second shot at an appeal in places like Michigan. While Georgia law provides the appellate court discretion to review some legal issues, many states like Florida provide two overarching categories of which an appeal is discretionary: non-final orders of lower tribunals and final orders of circuit courts acting in their review capacity. Rule 9.030.

### Advantages & Disadvantages of Discretionary Appeals

While not all jurisdictions have the same criteria for appellate review, discretionary appeals generally involve reviewing administrative orders and nominal judgments. In some jurisdictions, like Florida, discretionary appeals concern venue and injunctions, as well as whether settlement agreements are enforceable, set aside, or never existed. Discretionary appeals offer appellate courts, which have very busy schedules, an opportunity to evaluate whether the issue on appeal should be heard.

The primary advantage of discretionary appeals is that the appellate courts may focus their attention and limited resources to matters of great importance, using their discretion to deny hearing cases involving nominal issues or judgments. For example, the Georgia legislature does not permit direct appeal in cases involving a judgment of \$10,000 or less in circumstances where a plaintiff prevailed, but a finder of fact determined the damage suffered was not substantial. While

the losing party has the right to pursue an appeal, they must first show error and why the appeal should be granted and heard.

While discretionary appeals allow the court to conserve resources, the power given to the courts to decide what cases will be heard presents some disadvantages to an appealing party. For example, the decision to hear a case on discretionary appeal is purely based on the subjective discretion of the members of the appellate court. In some jurisdictions, such as Georgia, discretionary appeals could also be denied on a technicality, a disadvantage to those who are not as familiar with post-judgment procedures.

In Georgia, in order to have the court consider discretionary appeals, an application must be filed within 30 days, or seven days in a dispossessory action, from the stamped "filed" date of the trial court's signed order or judgment being appealed. If no such application is made within 30 days of the judgment, the court of appeals is without jurisdiction to entertain the appeal, and the appeal will be dismissed. See *Hogan v. Taylor Cnty. Bd. of Ed.*, 157 Ga. App. 680, 680 (1981) (finding that appellant's failure to obtain an order from the court of appeals permitting the filing of its appeal from the lower court's review of an administrative agency's decision must result in the appeal's dismissal); *St. Simons Island Save the Beach Association, Inc. v. Glynn Cnty. Bd. of Comm'rs*, 205 Ga. App. 428-29 (1992) (holding that because no application for appeal was made in a case that required an application, the court of appeals is without jurisdiction and the appeal must be dismissed).

Paying close attention to the procedural requirements for a party to pursue an appeal will also allow a party to find technical error that can result in dismissal of an appeal before significant costs are incurred.

## Practical Steps

When evaluating an appeal filed by a party or considering filing an appeal on behalf of a client, many steps need to be taken to ensure that the appropriate appeal is filed and the necessary steps are taken to pursue the appeal. This becomes significantly important in situations where the appeal, by statute, is discretionary and an application to be heard must first be approved by the appellate court. As such, it is important to follow these steps:

- Consider the nature of the case
- Evaluate the jurisdictional rules
- Determine whether the appeal is a matter of right or discretionary
- Verify deadlines with the local rules to ensure that the appeal is timely filed

These steps and the deadlines for appeals are usually found in local rules. A procedural error or miscalculation by an opposing party may save a party from a lengthy appeal.

Being aware of post-judgment procedural rules will protect clients from unnecessary litigation and bring their cases to a close without much delay.