



CAVEAT 2024: PETITION FOR REVIEW

Blair McLinn

404-290-5098

blair.mclinn@dor.ga.gov



Disclaimer:

The information provided in this presentation is for informational purposes only and should not be construed as legal advice. While efforts have been made to ensure the accuracy and completeness of the information presented, it may not reflect the most current legal developments or interpretations.


This presentation is not a substitute for professional legal advice. You should consult with a qualified attorney or legal advisor regarding your specific legal issues and questions.

No attorney-client relationship is created by viewing or using this presentation. The presenter and associated parties disclaim any liability arising from reliance on the information contained herein.



5-3-??? PETITION FOR REVIEW

48-5-311 (g) APPEAL TO
SUPERIOR COURT



Before we start, we must dive in to
48-5-311(g) Appeal to Superior Court

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(1) The taxpayer or the BOA may appeal to the superior court. From the decisions of the:
 - BOE
 - Hearing officer
 - Arbitrator
 - By mutual written agreement, the taxpayer and the BOA may waive an appeal to the BOE and initiate an appeal
- The BOA shall not appeal a decision changing an assessment by **20%** or less unless the BOA gives the CGA a written notice of its intent to appeal
- within **10** days of receipt of the notice, the CGA by majority vote, approves or denies the appeal

5-3-3 DEFINITIONS

- **(3) “Decision”**
 - Any formal or informal adjudication, decision, determination, judgment, order, ruling, or other act of a judicatory that is judicial or quasi-judicial in nature.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)... The notice shall be mailed or filed within 30 days from the date on which the decision is delivered from:
 - board of equalization
 - hearing officer,
 - arbitrator
- Within 45 days of receipt of a taxpayer's notice of appeal and before certification of the appeal to the superior court,
- the county board of tax assessors shall send to the taxpayer notice that a settlement conference

CHATTOOGA CTY. BD. OF TAX ASSESSORS V. CONNELLY
COURT OF APPEALS OF GEORGIA
FEBRUARY 16, 2024, DECIDED

- The “BOE” issued a decision regarding the valuation of a property and mailed its decision by certified mail on November 21, 2022. The taxpayer retrieved the decision from the post office on November 25, 2022, and on December 22, 2022, he notified the Board that he was appealing the BOE's decision to the Superior Court.



CHATTOOGA CTY. BD. OF TAX ASSESSORS V. CONNELLY
COURT OF APPEALS OF GEORGIA
FEBRUARY 16, 2024, DECIDED

- *The BOA contends that the deadline to file a tax appeal is computed from the date that the decision is mailed, rather than the date the decision is received by the taxpayer.*
- *Finally, the BOA contends that construing the term “delivered” as the date on which a taxpayer retrieves a decision from the post office would create a “slippery slope ... for counties wherein taxpayers would not have to claim their registered or certified mail and the timeline to file an appeal would never begin.”*



CHATTOOGA CTY. BD. OF TAX ASSESSORS V. CONNELLY
COURT OF APPEALS OF GEORGIA
FEBRUARY 16, 2024, DECIDED

- However, the issue of a taxpayer failing to collect their mail is not before us in the instant appeal. Instead, here, the United States Postal Service certified mail receipt includes a section that is to be completed “on delivery,” and the record demonstrates that this portion of the receipt shows the “Date of Delivery” as November 25, 2022. Accordingly, the taxpayer’s notice of appeal was timely filed on December 22, 2022.
- The Court of Appeals affirmed the trial court's denial of the BOA’s motion to dismiss Connelly's appeal.



48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2) An appeal by the taxpayer shall be effected by emailing, if the BOA has adopted a written policy consenting to electronic service, or by mailing to or filing with the BOA a written petition for review.

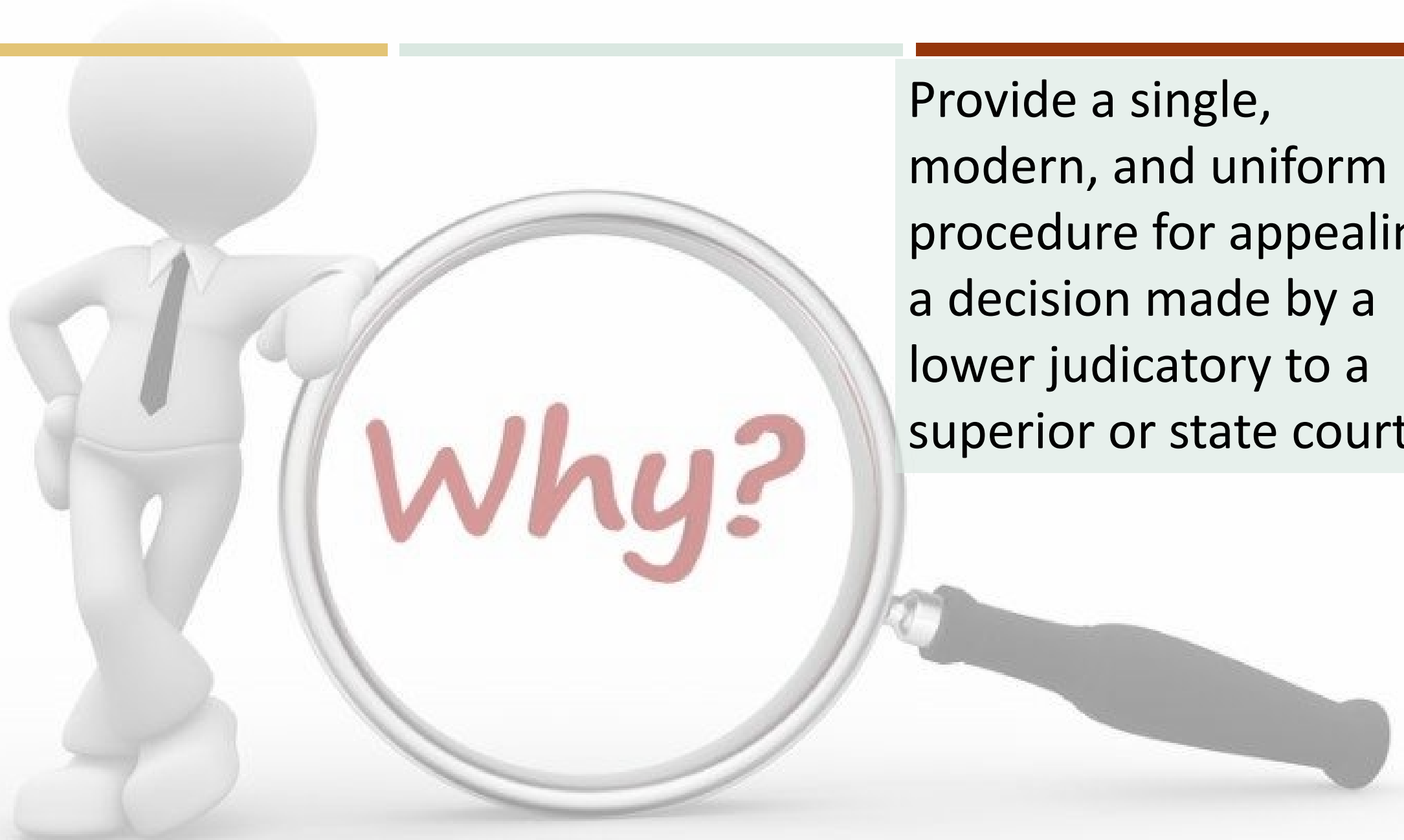
5-3-3(9) “PETITION FOR REVIEW”

- A request for review of a final judgment filed in a reviewing court by a petitioner

5-3-3(9) “PETITION FOR REVIEW” REPLACING THE FOLLOWING

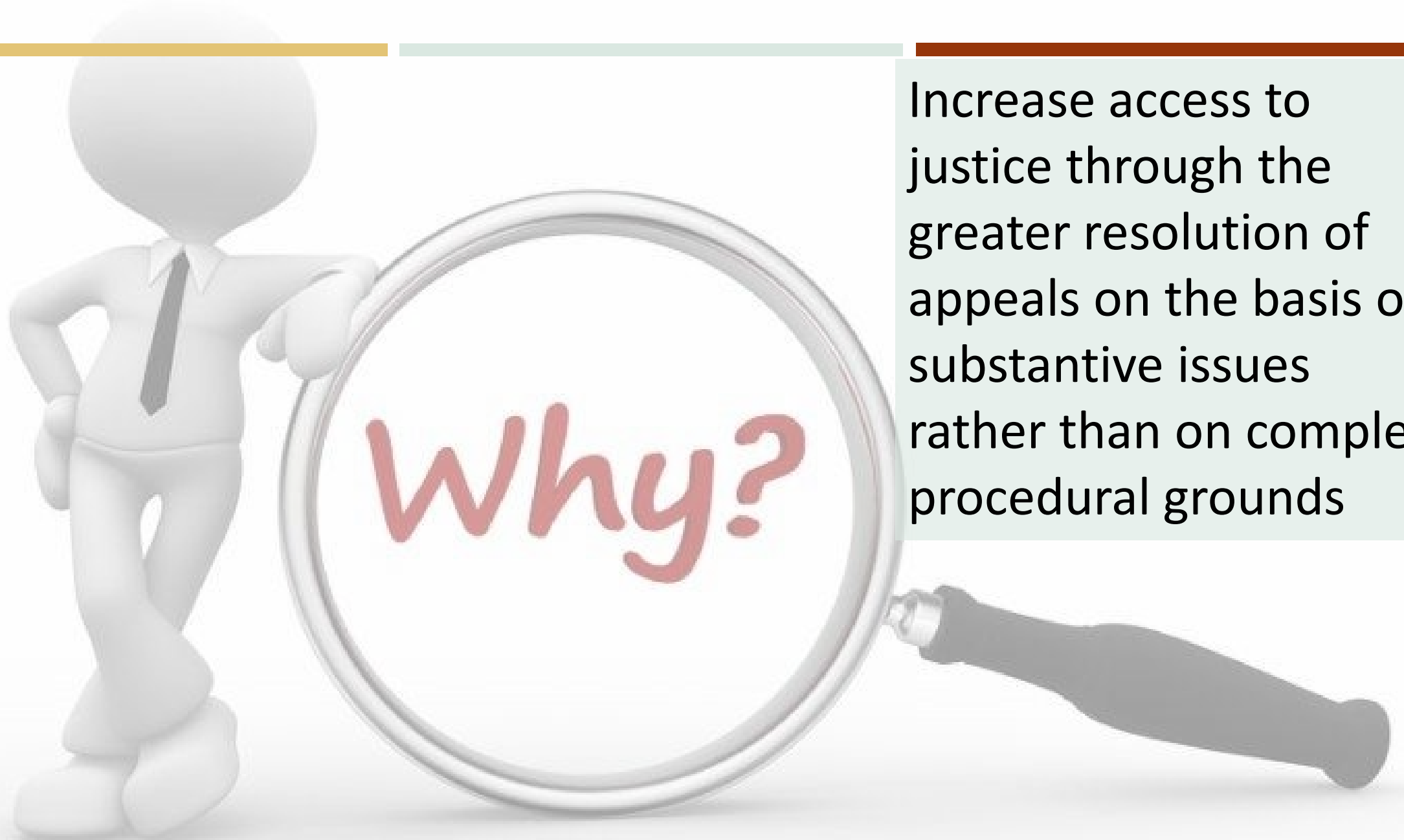
- Writ of certiorari
 - *a court process to seek judicial review of a decision of a lower court or government agency*
- Writ of mandamus
 - *a court order that commands a government official or entity to perform an act it is legally required to perform as part of its official duties, or to refrain from performing an act the law forbids it from doing*
- Writ of prohibition
 - *directing a subordinate to stop doing something the law prohibits. This writ is often issued by a superior court to the lower court directing it not to proceed with a case which does not fall under its jurisdiction.*
- Notice of appeal.
 - *the paper you file in the superior court where your case was decided to let the court and the other side know that you are appealing the court's decision.*

This Act shall become effective on July 1, 2023, and shall apply to petitions for review filed in superior or state court on or after such date.




Provide a single, modern, and uniform procedure for appealing a decision made by a lower judicatory to a superior or state court

OCGA 5-3-2(b)(1)



Increase access to justice through the greater resolution of appeals on the basis of substantive issues rather than on complex procedural grounds



Retain the **limited appellate jurisdiction** of state courts prescribed in the Constitution of Georgia and Code sections outside of this chapter.

Why?

- The term, “appellate jurisdiction”:
 - The power of a higher court to review and revise the outcome of a case decided by a lower court.
- The term “limited” :
 - Suggests that this jurisdiction is not absolute and may only apply to certain types of cases or under specific conditions

OCGA 5-3-2(b)(3)

5-3-2 LEGISLATIVE FINDINGS AND INTENT

- (a) The General Assembly finds that many appeals from a lower judicatory to a superior or state court result in dismissal on complex procedural grounds and not a decision on the merits.



COMMON JUDICATORY DEFINITION

1. A court of law and justice; tribunal; judiciary.
2. The administration of justice.

5-3-3 DEFINITIONS

- (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.

5-3-3 DEFINITIONS

- (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.



5-3-3 DEFINITIONS

- (5) “Judicatory” means any continued:

- 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.



5-3-2 LEGISLATIVE FINDINGS AND INTENT

- **(c)** Consistent with the laws and the Constitutions of Georgia and the United States, the courts shall:
 - **(1)** ...render decisions based on the merits of each case and avoid dismissal of any case or refusal to consider any points raised therein
 - unless such dismissal or refusal is expressly required by statute;
 - **(2)** Construe any petition for review filed under this chapter according to its:
 - substance,
 - merit,
 - and function
 - and not merely its style, form, or title; and
 - **(3)** Not construe this chapter to expand the limited appellate jurisdiction of state courts prescribed in the Constitution of Georgia and Code sections outside of this chapter.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)An appeal by the taxpayer as provided in paragraph (1) of this subsection shall be effected by emailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by mailing to or **filing with the county board of tax assessors**
- a written **petition for review**. An appeal by the BOA shall be effected by giving a **petition for review** to the taxpayer.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)...Petition for review given to the taxpayer shall contain:
 - The date
 - The name
 - Last known address of the taxpayer.
 - Specifically state the grounds for appeal.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)...The petition for review shall be mailed or filed within **30 days** from the date on which the **decision** of the county board of equalization, hearing officer, or arbitrator is delivered pursuant to subparagraph (e)(6)(D), paragraph (7) of subsection (e.1), or division (f)(3)(C)(ix) of this Code section.

5-3-3 DEFINITIONS

- **(3) “Decision”**
 - Any formal or informal adjudication, decision, determination, judgment, order, ruling, or other act of a judicatory that is judicial or quasi-judicial in nature.

CONFLICTS WITH 5-3-6

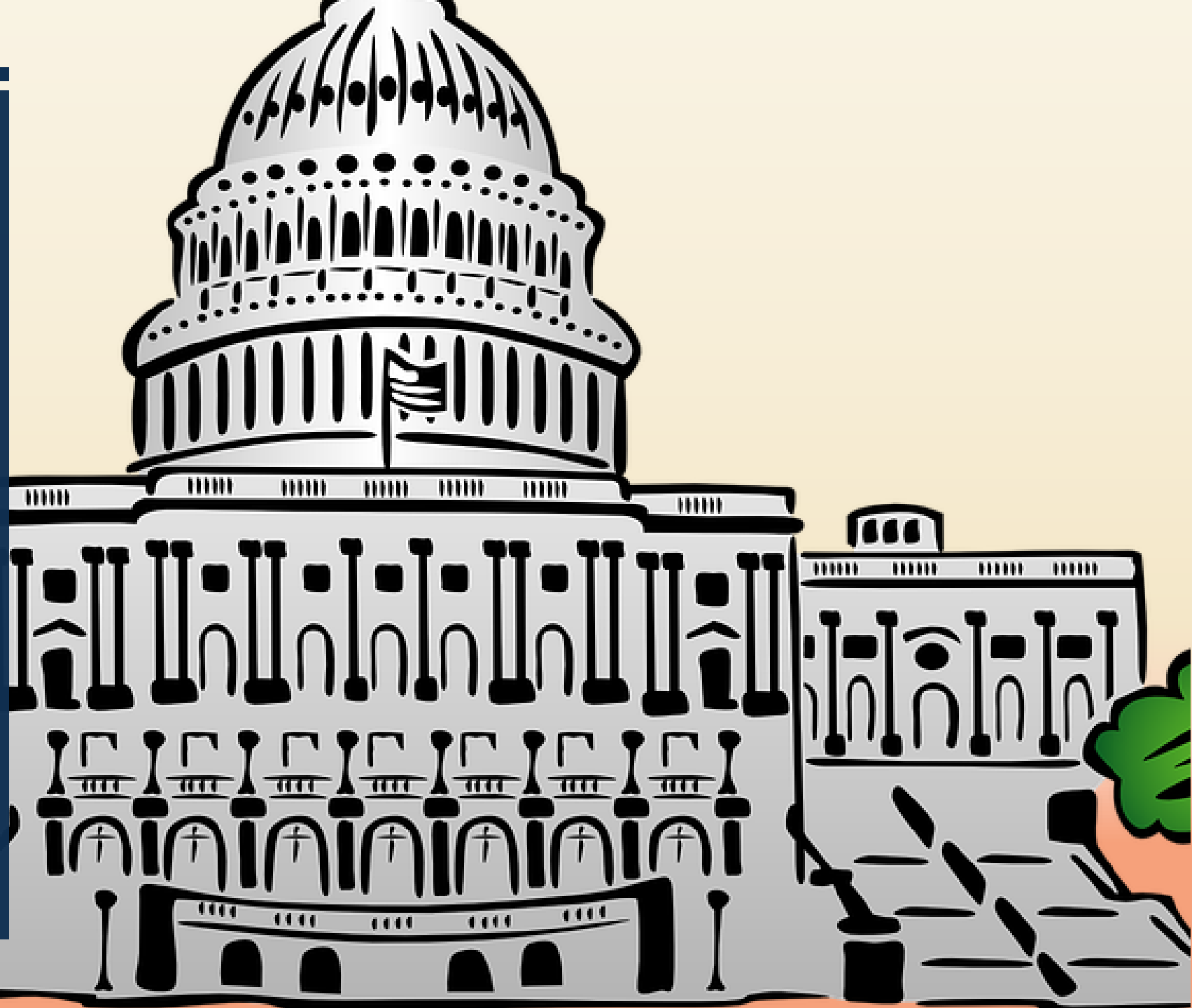
Petitioning for review.

- (a) A petitioner invokes the appellate jurisdiction of a reviewing court under this chapter by **filing a petition for review with the clerk of the reviewing court.**
 - *“Clerk of Superior Court”*
- (b) The consent of the lower judicatory shall not be required for the filing of a petition for review.

5-3-3

(12) “Reviewing court”

- Superior or state court reviewing a final judgment pursuant to this chapter.



5-3-7 PRESCRIBES PETITION BACK TO BOA

- **(b) Except as otherwise prescribed by law,** a petitioner shall file a petition for review with the clerk of the reviewing court within **30 days** after the final judgment of the lower judicatory is:
 - (1) Signed and notice of the final judgment has been provided to all parties, if the lower judicatory does not have a clerk; or
 - (2) Filed or recorded, whichever first occurs, if the lower judicatory has a clerk.

WHAT WE KNOW SO FAR!!!

48-5-311 (g)

- File an appeal w/ the BOA within 30 days from the date of the decision is delivered from the BOE, Hearing Officer, or Arbitrator.

5-3-6 & 5-3-7

- 5-3-6 - File a petition for review w/ the Clerk of Court from the decision of a lower judicatory
- 5-3-7(b) - Except as otherwise prescribed by law, the petition for review is filed w/ the Clerk of Court w/in 30 days from a decision.

STEP ONE!!!!

The “Appeal” or “Petition for Review” is filed with the **Board of Assessors** within 30 days of a decision of a lower judicatory

one STEP at a time...





APPEAL FORM

48-5-311 (e)

- (1)(A.1) The commissioner shall establish by rule and regulation a uniform appeal form that the **taxpayer may use**. Such uniform appeal form shall require the initial assertion of a valuation of the property by the taxpayer.
- (2)(A)... A written objection to an assessment of real property, stating the location of the real property and the identification number, if any, contained in the tax notice shall be deemed a notice of appeal
- A written objection to an assessment of personal property, giving the account number, if any, contained in the tax notice and stating that the objection is to an assessment of personal property shall be deemed a notice of appeal

PETITION FOR REVIEW FORM

- 5-3-7(e) Except as otherwise required by law, a petition for review shall contain in substantially similar form the following:
 - (1) A caption stating the name of the petitioner and the name of the respondent, if any;
 - (2) The title “Petition for review to superior court” or “petition for review to state court” below the caption;

5-3-7(E) EXCEPT AS OTHERWISE REQUIRED BY LAW, A PETITION FOR REVIEW SHALL CONTAIN IN SUBSTANTIALLY SIMILAR FORM THE FOLLOWING:

- (3) A body that includes the following:
 - (A) The statement: “(*name of petitioner*), the petitioner named above, petitions the (*Superior or State*) Court of (*name of county*) for review of the final judgment rendered by (*name of lower judicatory*) on (*date*) with the following case number designated by the lower judicatory: (*lower judicatory case number*).”;
 - (B) A concise statement of the final judgment being appealed;
 - (C) A brief statement describing any existing recording, transcript, or other record of evidence in the lower judicatory; and
 - (D) If the case before the lower judicatory is a criminal case, then a brief statement of the offense and sentence prescribed by the lower judicatory, if any, including whether the petitioner is confined in jail or otherwise incarcerated pending the appeal; and

5-3-7(E) EXCEPT AS OTHERWISE REQUIRED BY LAW, A PETITION FOR REVIEW SHALL CONTAIN IN SUBSTANTIALLY SIMILAR FORM THE FOLLOWING:

- (4) The name, mailing address, telephone number, and email address, if any, of:
 - (A) The attorney for the petitioner; or
 - (B) The petitioner, if the petitioner is not represented by an attorney.

APPEAL OF ASSESSMENT FOR DIGEST YEAR : 				
Appeal No: _____				
Name			Home Phone	
Address			Work Phone	
Address			Email Address	
City	State	Zip		
Property / Appeal Type (Check One)				
<input type="checkbox"/> Real <input type="checkbox"/> Personal <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Manufactured Home				
Property ID Number			Account Number	
Property Description				
Specify Grounds for Appeal:		You must select only one of the following options:		
Check all that apply		<input checked="" type="radio"/> BOE: appeal to the county board of equalization with appeal to the superior court (any / all grounds)		
Value	<input type="checkbox"/>	<input checked="" type="radio"/> ARBITRATION: to arbitration with an appeal to the superior court (valuation is only grounds that may be appealed to arbitration)		
Uniformity	<input type="checkbox"/>	<input type="radio"/> HEARING OFFICER: for (1) nonhomestead real property (and contiguous real property) or (2) wireless personal property account(s) with a FMV in excess of \$500,000, to a hearing officer with appeal to superior court (value and uniformity only)		
Taxability	<input type="checkbox"/>	<input checked="" type="radio"/> SC: Directly to Superior Court (requires consent of BOA) (any / all grounds)		
Exemption Denied	<input type="checkbox"/>	* Additional Cost / Fees May apply		
Breach of Covenant	<input type="checkbox"/>			
Denial of Covenant	<input type="checkbox"/>			
Owner's value assertion (required)				
Property Owner Comments				
Property Class <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Agricultural <input type="checkbox"/> Other: _____				
Signature of Property Owner or Agent		Date		
NOTE: If the appeal form is signed by an agent, a letter of authorization must accompany the filing of the appeal.				
Agent's Address:		Agent's Phone #		
		Agent's Email Address:		
NOTE: Filing of this document will create a review of the county's assessment. Reasonable notice is herein provided that an onsite inspection of the subject property by a member of the county appraisal staff may be performed.				
Assessors Use Only		Previous Year Value	Taxpayer's Returned Value	Current Year Value
		100%		
		40%		
Date Received:		Received By:		

APPEAL FORM



PETITION FOR REVIEW FORM

STATE OF GEORGIA

_____,)
)
Petitioner,)
)
v. _____) Reviewing Court Case No.:
)
)
_____,)
)
Respondent.)

PETITION FOR REVIEW TO [SUPERIOR/STATE] COURT

_____, the Petitioner named above, petitions the [Superior/State] Court of _____ County for review of the final judgment rendered by the [insert official name of lower judiciary] on [insert date] with the following case number designated by the lower judiciary: _____.

Concise Statement of the Final Judgment Appealed
OCGA § 5-3-7 (e) (3) (B)

The final judgment being appealed is as follows: _____

_____.

Record in the Lower Judiciary
OCGA § 5-3-7 (e) (3) (C)

The following describes any existing recording, transcript, or other record of evidence in the lower judiciary (check one):

☐ NO official transcript or recording exists of the proceedings in the lower judiciary.

☐ NO official transcript exists of the proceedings in the lower judiciary, but the proceedings were recorded by: _____ [insert who recorded the proceedings and whether audio or video] _____.

☐ An official transcript exists of the proceedings in the lower judiciary.

☐ Other: _____ [describe other record of evidence in the lower judiciary] _____.

July 2023

OCGA § 5-3-7 (e) (3) (D)

☐ This is a criminal case and the Petitioner named above [is not confined in jail or otherwise incarcerated / is currently confined or incarcerated at (location)]. The offense[s] and the sentence prescribed by the lower judiciary in this case are as follows:

_____.

Applicable Standard of Review
(Check one)

☐ A limited review on the record is the default standard of review in a petition for review and a de novo (new) trial is not specified in the OCGA as the applicable standard of review for this type of case. Therefore, this Petition for Review seeks judicial review for clearly erroneous findings of fact and credibility, abuse of discretion, sufficiency of evidence, and de novo review of questions of law. OCGA § 5-3-5 (a). Additional details regarding the issues for review are attached.

☐ A de novo proceeding is specified in OCGA § _____ as the applicable standard of review for this type of case. Therefore, this Petition for Review seeks a de novo (new) trial of all the issues raised in the lower judiciary with NO REMAND. OCGA § 5-3-5 (b).

This ____ day of _____, 20__.

Signature: _____

I am the (check one):

☐ Petitioner ☐ Attorney for Petitioner

Printed Name: _____

Mailing Address: _____

Telephone Number: _____

E-mail Address: _____

July 2023

QUESTION?

After a decision is made by a lower judicatory, what form do we use?

- *“Appeals under OCGA § 48-5-311 (e), (e.1), and (f) must use the “uniform appeal form” established by the state revenue commissioner under OCGA § 48-5-311 (e) (1) (A.1), and the “petition for review” format in OCGA § 5-3-7 (e) (in at least “substantially similar” form) must be used for appeals to the superior court under OCGA § 48-5-311 (g).”*



Darron J. Enns

Assistant General Counsel

Judicial Council of Georgia / Administrative Office of the Courts

QUESTION?



By not filing the petition for review form within the clerk's office w/in 30 days of the final decision rendered in the lower court, would that make the case dismissible (not able to be heard)?

- *"No, ...The phrase "except as otherwise prescribed by law" in OCGA § 5-3-7 (b) was intended to account for the extended timeline and complex conditions precedent to an appeal to superior court under OCGA § 48-5-311 (g).*
- *This means that the entire settlement conference stage (which would be classified a "condition[] precedent to appeal" under OCGA § 5-3-3 (4) (B)) must be completed before any superior court filing deadline clock starts running – **there's no "final judgment" to appeal until the settlement conference stage has been completed.** **OCGA §§ 5-3-3 (4); 5-3-4 (a).**"*

Darron J. Enns

Assistant General Counsel

Judicial Council of Georgia / Administrative Office of the Courts

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)...Within 45 days of receipt of a taxpayer's petition for review and before the petition for review is filed in superior court, the BOA shall:
 - Send to the taxpayer notice that a settlement conference, in which the BOA and the taxpayer shall confer in good faith
 - held at a specified date and time which shall be no later than 30 days from the notice of the settlement conference
 - and notice of the amount of the filing fee for a petition for review, if any, required by the clerk of the superior court.

EXPLAINED

5-3-3 Definitions

- (4) “Final judgment” means a decision of a lower judicatory in a case that is no longer pending in a lower judicatory in which a petitioner has:
 - (A) Exhausted all appeals or administrative remedies available in the lower judicatory; and
 - (B) Satisfied all conditions precedent to appeal provided by law, including, but not limited to, the conditions provided for in Code Section 33-2-26.

5-3-4 Jurisdiction

- (a) Except as provided in subsection (b) of this Code section, the superior and state courts shall have appellate jurisdiction pursuant to this chapter over a final judgment of a lower judicatory.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)... A taxpayer may appear for the settlement conference in person, by his or her authorized agent or representative, or both.
- The BOA, in their discretion and with the consent of the taxpayer, may alternatively conduct the settlement conference by audio or video teleconference or any other remote communication medium.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)... The taxpayer may exercise a one-time option to reschedule the settlement conference to a different date and time acceptable to the taxpayer during normal business hours.
- After a settlement conference has convened, the parties may agree to continue the settlement conference to a later date.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g) (2)... If at the end of the 45 day review period the BOA elects not to hold a settlement conference,
- then the appeal shall terminate and the taxpayer's stated value shall be entered in the records of the board of tax assessors as the FMV for the year under appeal and 299 (c) shall apply to such value.⁴⁵

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g) (2)... If the taxpayer chooses not to participate in the settlement conference, he or she may not seek and shall not be awarded fees and costs at such time when the petition for review is reviewed in superior court.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)... If at the conclusion of the settlement conference the parties reach an agreement, the settlement value shall be entered in the records of the BOA as the fair market value for the tax year under appeal and 299 (c) shall apply to such value.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)... If at the conclusion of the settlement conference the parties cannot reach an agreement, then written notice shall be provided to the taxpayer that the filing fees for the superior court must be paid by the taxpayer by submitting to the county board of tax assessors a check, money order, or any other instrument payable to the clerk of the superior court within 20 days of the date of the conference.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)... Notwithstanding any other provision of law to the contrary, the amount of the filing fee for an appeal under this subsection shall be \$25.00.
- An appeal under this subsection shall not be subject to any other fees or additional costs otherwise...

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)... Within 30 days of receipt of the taxpayer's payment made out to the clerk of the superior court, or, in the case of a petition for review filed by the BOA, within 30 days of giving notice of the petition for review to the taxpayer,
- the BOA shall file with the clerk of the superior court the petition for review and any other papers specified by the person appealing, including, but not limited to, the staff information from the file used by the BOA, the BOE, the hearing officer, or the arbitrator.

CURRENT STEPS

1. Appeal to the BOA using the “Petition for Review Form” w/in 30 days of a decision rendered by a lower judicatory.
2. Settlement conference must be held 45 day from the day the petition for review was filed with the BOA.
3. If a settlement can't be reached, a notice is sent to the taxpayer for payment made to BOA w/in 20 days of the date of the conference; payable to the county clerk of court for \$25.
4. With in 30 days of payment from the taxpayer, the BOA shall file with the clerk of the superior court the petition for review.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)... Immediately following payment of such \$25.00 filing fee to the clerk of the superior court, the clerk shall remit the proceeds thereof to the governing authority of the county which shall deposit the proceeds into the general fund of the county.

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(2)... All papers and information filed with the clerk shall become a part of the record on appeal to the superior court.
- At the time of the filing of the petition for review, the **BOA shall serve** the taxpayer and his or her attorney of record, if any, with a copy of the petition for review filed in the superior court and with the civil action file number assigned to the appeal.
- No discovery, motions, or other pleadings may be filed by the county board of tax assessors in the appeal until such service has been made.

5-3-10 MANNER FOR SERVICE OF PROCESS

(a) Except as otherwise provided by law, service of process under this chapter shall be made in the following manner:

- (1) A party's attorney or agent authorized to receive service shall be served with any document, unless:
 - (A) Direct service on a party is ordered by the reviewing court; or
 - (B) A specific manner of service is otherwise required by law;
- (2) Service of any document shall be *made in person*, by *mail*, or *electronically* if consent to electronic service is given *as provided in subsection (b)* of this Code section;

(b) A person may consent to being served with pleadings electronically in a petition for review as provided for in subsection (f) of Code Section 9-11-5.

5-3-10 MANNER FOR SERVICE OF PROCESS

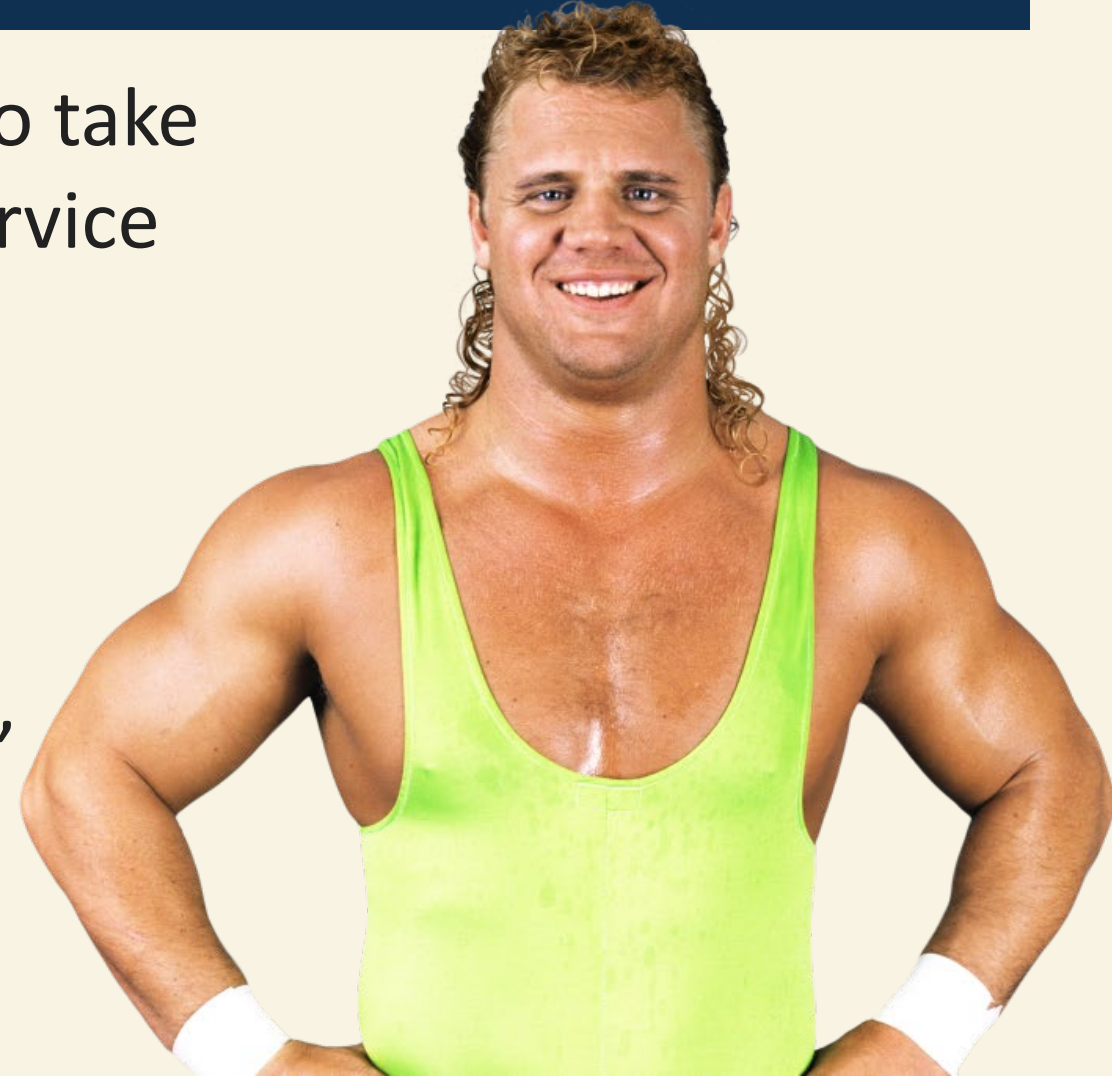
- (3) Proof of service shall be shown by:
 - (A) Acknowledgment of the attorney or party served; **or**
 - (B) A certificate of service from the attorney, party, or other person perfecting service;
- (4) The certificate of service provided for in this subsection shall:
 - (A) Be attached to the original of the document to be served;
 - (B) Be taken as prima-facie proof of service; and
 - (C) Read substantially as follows: “I do certify that (number of copies) of the attached document(s) have been furnished to (name of party served) by (delivery, mail, or email) on (date delivered, mailed, or emailed)”;

5-3-10 MANNER FOR SERVICE OF PROCESS

- (5) Service of any document may be perfected either before or after filing such service with the clerk. If service is made by mail, it shall be deemed perfected on the day it was deposited in the mail. If service is perfected by mail, three days shall be added to any deadline required for a response, to allow for mailing;
- (6) If the address of any party is unknown and the party is not represented by an attorney of record, service may be perfected on the party by mail directed to the last known address of the party; and
- (7) Service may be waived or acknowledged either before or after filing.

5-3-3 DEFINITIONS

- (7) “Perfect” or “perfected” means to take all legal steps needed to complete service of process.
- (8) “Person” means an individual, corporation, association, partnership, other organization, or other entity.



48-5-311 APPEALS TO THE SUPERIOR COURT

- **(g)(3)** The appeal shall constitute a **de novo action**.
- The board of tax assessors shall have the burden of proving its opinions of value and the validity of its proposed assessment by a preponderance of evidence.
- Upon a failure of the board of tax assessors to meet such burden of proof, the court shall find that the value asserted by the board of tax assessors is incorrect and authorize the determination of the final value of the property.

48-5-311 APPEALS TO THE SUPERIOR COURT

- **(g)(4)(A)** The appeal shall be placed on the court's next available jury or bench trial calendar, at the taxpayer's election, following the filing of the appeal unless continued by the court.
- If only questions of law are presented in the appeal, the appeal shall be heard as soon as practicable before the court sitting without a jury.
- Each hearing before the court sitting without a jury at the taxpayer's election shall be held within 30 days following the date on which the appeal is filed with the clerk of the superior court unless continued by the court for a period not to exceed 90 days.

48-5-311 APPEALS TO THE SUPERIOR COURT

(g)(4)(B)(i) The BOA shall use the valuation:

- BOE
- Hearing officer
- Arbitrator

in compiling the tax digest for the county

48-5-311 APPEALS TO THE SUPERIOR COURT

- **(g)(4)(B)(ii)(I)** If the final determination of value on appeal is less than the valuation thus used, the tax commissioner shall be authorized to adjust the taxpayer's tax bill to reflect the final value for the year in question.

48-5-311 APPEALS TO THE SUPERIOR COURT

- **(g)(4)(B)(ii)(II)** If the final determination of value on appeal causes a reduction in taxes and creates a refund that is owed to the taxpayer, it shall be paid by the tax commissioner to the taxpayer, entity, or transferee who paid the taxes with interest

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(4)(B)(ii)(III) If the TAXPAYER APPEALS TO THE SUPERIOR COURT PURSUANT ... AND THE final determination of value on appeal is **85%** or less of the valuation set by the county board of equalization, hearing officer, or arbitrator as to any real property,
- the taxpayer... shall recover costs of litigation and reasonable attorney's fees incurred in the action...

48-5-311 APPEALS TO THE SUPERIOR COURT

- (g)(4)(B)(ii)(IV) IF THE BOA APPEALS TO THE SUPERIOR COURT ... AND THE FINAL DETERMINATION OF VALUE ON APPEAL IS **85%** OR LESS OF THE VALUATION SET BY THE BOARD OF ASSESSORS ...
- THE TAXPAYER... SHALL RECOVER COSTS OF LITIGATION AND REASONABLE ATTORNEY'S FEES INCURRED IN THE ACTION...

WHAT IF?

- An appeal form was used instead of the petition for review form. Is the petition for review process over?

■ **NO**

- *“If the improper format (i.e., “the appeal form from the assessor’s office”) was used to file the petition for review, the remedy is not to reject or dismiss the filing. Rather, the correct remedy is to amend the format as permitted under OCGA §§ 5-3-7 (f); 5-3-8 (d); 5-3-12 (c). Also, per OCGA § 5-3-2 (c) (2), “the court shall . . . construe any petition for review filed under this chapter according to its substance, merit, and function and not merely its style, form, or title.”*



Darron J. Enns

Assistant General Counsel

Judicial Council of Georgia / Administrative Office of the Courts

LET'S SEE WHY

- **5-3-7 (f)** Failure to provide the information required on the petition for review form shall be an amendable defect, and such defect shall be cured as directed by the reviewing court.



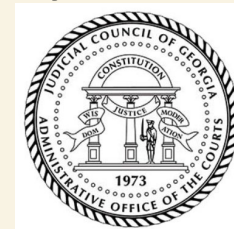
Darron J. Enns

Assistant General Counsel

Judicial Council of Georgia / Administrative Office of the Courts

LET'S SEE WHY

- **5-3-8 (d)** A party may amend a petition for review, response, or reply under this chapter as a matter of course and without leave of the reviewing court at any time before the entry of a pretrial order or before a hearing on the merits is held by the reviewing court, whichever shall first occur.
- Thereafter, a party may amend a petition for review, response, or reply only by leave of the reviewing court or by written consent of each adverse party. Such leave shall be freely given by the reviewing court if justice so requires.



Darron J. Enns

Assistant General Counsel

Judicial Council of Georgia / Administrative Office of the Courts

LET'S SEE WHY

- **5-3-12 (c)** The reviewing court shall give the petitioner a reasonable opportunity to amend a petition for review, bond, or affidavit of indigence for the purpose of curing any defect. The reviewing court may impose such filing deadlines for amendments under this subsection as may be necessary to permit a just and expeditious review of a petition for review.

Darron J. Enns

Assistant General Counsel

Judicial Council of Georgia / Administrative Office of the Courts



LET'S SEE WHY

- **5-3-2 (c)** Consistent with the laws and the Constitutions of Georgia and the United States, the courts shall:
 - (2) Construe any petition for review filed under this chapter according to its substance, merit, and function and not merely its style, form, or title; and



Darron J. Enns

Assistant General Counsel

Judicial Council of Georgia / Administrative Office of the Courts

WHAT IF?

- A taxpayer signed the petition of review form in the wrong place, is the petition null and void?
- **NO**
 - The petition is amendable per *OCGA §§ 5-3-7 (f); 5-3-8 (d); 5-3-12 (c)*. Also, per *OCGA § 5-3-2 (c) (2)*.



IS YOUR
MIND
BLOWN
YET?

CONTINUE TO LEARN THE PROCESS



5-3-3 DEFINITIONS

- **(11) “Respondent”**

- A person who is adverse to the petitioner and a party to the dispute underlying the final judgment rendered by the lower judicatory. Except for reasons other than having rendered the final judgment under review, the term ‘respondent’ shall not include any judge, official, or member of the lower judicatory that rendered the final judgment under review. If there is no party adverse to the petitioner, the respondent shall be:
 - (A) For quasi-judicial decisions rendered by a state official, board, tribunal, commission, authority, council, or similar body, the respondent shall be the State of Georgia;
 - (B) For quasi-judicial decisions rendered by a municipal official, board, tribunal, commission, authority, council, or similar body, the respondent shall be the corresponding municipality; and
 - (C) For quasi-judicial decisions rendered by a county or local school system official, board, tribunal, commission, authority, council, or similar body, the respondent shall be the corresponding county or local school system.

5-3-5 OBLIGATIONS OF COURT; DE NOVO PROCEEDINGS; JURY TRIALS

- **(a) Except as provided in subsection (b) of this Code section or otherwise provided by law, a reviewing court shall:**
 - **(1)** Review only matters raised in the record of the proceeding in the lower judicatory;
 - **(2)** Accept the findings of fact and credibility of the lower judicatory unless they are clearly erroneous;
 - **(3)** Accept a decision regarding an issue within the sound discretion of the lower judicatory unless such a decision was an abuse of discretion;
 - **(4)** Determine whether the final judgment was sustained by sufficient evidence; and
 - **(5)** Review questions of law de novo.

5-3-5 OBLIGATIONS OF COURT; DE NOVO PROCEEDINGS; JURY TRIALS

- **(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.
- **(c)** A demand for a jury trial under this chapter shall be filed in the reviewing court within 30 days after filing a petition for review.

48-5-311(g)(3) The appeal shall constitute a de novo action.

5-3-9 MANAGEMENT OF COURT PROCEEDINGS

- (a) The reviewing court may issue such orders and writs as may be necessary to aid in its jurisdiction and manage court proceedings under this chapter.
- (b) The reviewing court shall grant continuances and enter such other orders as may be necessary to permit a just and expeditious review of a petition for review
- (c) After a petition for review is filed in the reviewing court, the reviewing court shall:
 - (1) Establish filing deadlines for any necessary documents; and
 - (2) Schedule any necessary proceedings or hearings.

5-3-11 EXTENSION OF FILING DEADLINES

- **(a)** Any party requesting a filing deadline extension from the reviewing court shall do so before the expiration of the existing filing period in effect, whether prescribed or extended.
- **(b)** The reviewing court shall only grant one filing deadline extension not to exceed 30 days for the filing of a petition for review ...

5-3-12 REQUIREMENTS FOR DISMISSAL BY REVIEWING COURT

- **(a)** Except for a final decision on the merits, a reviewing court shall not dismiss a petition for review unless the reviewing court finds one or more of the following:
 - **(1)** The petition for review was not filed within the time prescribed or extended;
 - **(2)** The reviewing court lacks jurisdiction;
 - **(3)** The question presented by the petitioner is moot;
 - **(4)** The absence of a justiciable controversy;
 - **(5)** The failure of a petitioner to prosecute; or
 - **(6)** The failure of a petitioner to comply with the provisions of this chapter or any court rule or order.
- **“on the merits”** *refers to a case whose decision rests upon the law as it applied to the particular evidence and facts presented in the case.*

5-3-12 REQUIREMENTS FOR DISMISSAL BY REVIEWING COURT

- **(b)** The reviewing court shall not immediately dismiss a petition for review because of any defect in the petition for review, bond, or affidavit of indigence, or because of the failure of the lower judicatory to transmit any document.
- **(c)** The reviewing court shall give the petitioner a reasonable opportunity to amend a petition for review, bond, or affidavit of indigence for the purpose of curing any defect. The reviewing court may impose such filing deadlines for amendments under this subsection as may be necessary to permit a just and expeditious review of a petition for review.
- **(d)** The reviewing court shall not immediately dismiss a petition for review for failure to perfect service on any party if the party obligated to perfect service shows due diligence in attempting to timely perfect service.

5-3-18 FINAL DECISION BY REVIEWING COURT; SERVICE; APPEALS

- **(a) (1)** After a petition for review is reviewed under this chapter, the reviewing court shall render a final decision:
 - **(A)** *Entering a judgment upon the petition for review;*
 - **(B)** *Ordering dismissal of the petition for review;*
 - **(C)** *Remanding a petition for review back to the lower judicatory with instructions; or*
 - **(D)** *A combination thereof.*

5-3-18 FINAL DECISION BY REVIEWING COURT; SERVICE; APPEALS

- (2) If the final decision rendered, it shall be:
 - in writing and specify whether the reviewing court is
 - affirming,
 - reversing, or
 - vacating
- the final judgment of the lower judicatory.

5-3-18 FINAL DECISION BY REVIEWING COURT; SERVICE; APPEALS

- (3) If the final decision remands the petition for review back to the lower judicatory,
- it shall provide instructions to the lower judicatory for further proceedings.



5-3-19 STATUS AFTER DISMISSAL OR WITHDRAWAL OF PETITION FOR REVIEW

- **(a)** If a petition for review is dismissed or withdrawn pursuant to this chapter, the rights of all parties shall be the same as if no appeal had been filed. Notwithstanding any other provision of law, the dismissal or withdrawal of a petition for review under this chapter shall:
 - **(1)** Dismiss the petition for review;
 - **(2)** Not dismiss the petitioner's underlying case from the lower judicatory or vacate the final judgment of the lower judicatory; and
 - **(3)** Reinstate the final judgment of the lower judicatory as if the petition for review had not been filed.



Y'all come back now, ya hear!!