

## **APPEAL FROM THE ALBANY MUNICIPAL COURT**

### **May I appeal a decision of the Municipal Court?**

Yes. In Georgia, decisions of a municipal court may be appealed to the superior court by writ of certiorari.

### **What is a writ of certiorari?**

A writ of certiorari is a discretionary writ issued by an appellate court demanding that a lower court deliver a case record for review. The writ is called discretionary because the Superior Court has the authority to grant or deny the writ. Most cases that reach the US Supreme Court do so by a writ of certiorari. Frequently, the term will be shortened, as in "The Court granted cert."

According to common law (the un-codified legal decisions and customs we inherited from England) a supreme court has power to review the proceedings of all inferior tribunals and to pass upon their jurisdiction and decisions on questions of law. *But in general the decisions of such inferior courts on questions of fact are conclusive and cannot be reversed on certiorari unless some statute confers the power on the higher court.* When any error has occurred in the proceedings of the court below which differ from common law customs, in any stage of the cause, either civil or criminal cases, the writ of certiorari is the only remedy to correct the error, unless some other statutory remedy has been given.

### **Does the Superior Court routinely grant a writ of certiorari?**

No. Certiorari from the Municipal Court is rarely granted by the Superior Court, and appellants rarely win on appeal. In short, the costs of an appeal usually outweigh the benefits.

### **How long do I have to apply for the writ of certiorari?**

A writ of certiorari must be applied for by you with a Certificate of Service attached within thirty (30) days of the entry of judgment.

### **What does it cost to appeal a case from Municipal Court?**

The filing fee which you must pay to the Clerk of the Superior Court is \$75. Additionally, you will be required to post a bond equal to the amount of the judgment that was rendered against you. The bond must be taken to the Municipal Court Office, payable to the City of Albany Treasury Department. Finally, you must pay the cost of copying and transmitting the record from Municipal Court to Superior Court.

## Where can I find the Rules which govern appeals from Municipal Court?

The procedures for appellate review of Municipal Court decisions are set forth in section 10-3 of *The Code of Ordinances of the City of Albany, Georgia*. The Law Library has a copy of the Code. Additionally, you can find the Code online at [www.municode.com](http://www.municode.com). The relevant section is copied *infra* for your convenience.

### **Sec. 10-3. Appellate review.** (Ord. No. 00-133, § 1, 7-25-00)

The orders, verdicts, judgments, and sentences of the court shall be subject to appellate review by writ of certiorari in the appropriate Dougherty County Superior Court or as otherwise provided by general state law.

(a) Any person who has been convicted of any criminal or quasi-criminal offense or violation of any ordinance, in any inferior judicatory by whatever name called, who desires a writ of certiorari to review and correct the judgment of conviction in the case shall be entitled to a supersedeas of the judgment, if he or his attorney files with the clerk of the court the proper papers, and, a bond payable to the municipality, in amount and with security acceptable to, and to be approved by the clerk of court, or chief judge as a condition that the defendant will personally appear and abide the final judgment, order, or sentence upon him in the case.

(b) All bonds must be paid to the City of Albany Treasury Department. The bond may be forfeited in the same manner as any other criminal or civil bond in any other court having jurisdiction. A bond may be forfeited according to the procedure prescribed in any of the municipal ordinances, or any provision of this chapter, or any state law granted to local municipalities. Alternatively, an action may be brought on the bond in any court having jurisdiction. Upon the giving of a bond the defendant shall be released from custody in the same manner as defendants are released upon supersedeas bonds in criminal cases where a notice of appeal has been filed.

(c) If the defendant is unable because of his indigence to make bond and makes this fact known by affidavit to be filed with the judge or clerk of court, as the case may be, the same shall operate as a supersedeas of the judgment; provided, however, that the defendant shall not be set at liberty unless he gives a bond as prescribed in subsections (a) and/or (b) of this Code section.

(d) The supersedeas provided for in this Code section shall operate to suspend the judgment of conviction until the case is finally heard, and determined in the Dougherty County Superior Court, to which it is taken by certiorari, or by the court of appeals upon appeal, provided that within the time prescribed by law the defendant shall apply for and procure the writ and remedies provided by law for reviewing the judgment complained of. The supersedeas shall be equally applicable whether the judge of the Dougherty County Superior Court to whom the petition for certiorari is presented sanctions it or refuses it, provided that within the time provided by law the defendant diligently files a notice of appeal.

(e) The object of this Code section is to provide a method by which a defendant may obtain a supersedeas so long as he is prosecuting or is entitled under the law to prosecute the proceeding brought or to be brought to review the conviction of which he is complaining, or any intermediate appellate judgment rendered thereon, in order that the defendant shall not be deprived of his right to apply to the courts by being compelled to serve his sentence or pay a fine before he has had the full opportunity allowed him by law of taking the necessary appeal under certiorari.

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY  
STATE OF GEORGIA

\_\_\_\_\_,  
Plaintiff in certiorari  
v. \_\_\_\_\_

CASE FILE  
NO. \_\_\_\_\_

\_\_\_\_\_,  
Defendant in certiorari  
and

\_\_\_\_\_,  
Respondent in certiorari

PETITION FOR CERTIORARI

Georgia, \_\_\_\_\_ County  
To the Superior Court of said County:

The petition of \_\_\_\_\_ shows to the court as follows:

(1) That on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (year), there came on to be tried in the \_\_\_\_\_ Court (lower tribunal) before Hon. \_\_\_\_\_, Judge (presiding officer), the case of \_\_\_\_\_ v. \_\_\_\_\_. Same being

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(describe nature of suit). A copy of said evidence, pleadings and transcript are hereto attached, and marked Exhibits "A," "B" and "C," respectively.

(2) In said proceeding, petitioner made certain motions and pleas, copies of which are attached hereto and marked Exhibits "D" and "E," respectively.

(3) On said \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (year), when said case was heard Petitioner presented certain motions which were overruled. Petitioner here and now assigns same as error.

(4) After argument of counsel for both parties, the case was submitted and a ruling was returned, as follows: \_\_\_\_\_ (copy of order or ruling).

Your petitioner specifically assigns error as follows:

(a) The order of the court overruling the motion, as set out in paragraphs two and three of this petition.

(b) The ruling of the court as set out in paragraph four of this petition, because it is:

1. Contrary to law.
2. Without evidence to support same.
3. Contrary to the principles of justice and equity.
4. etc.

Wherefore, the premises considered, Petitioner prays a writ of certiorari, directed to the Hon. \_\_\_\_\_, judge aforesaid, requiring him to certify and send up all the proceedings in said case to the next term of the superior court of \_\_\_\_\_ County, Georgia, to be held in and for said county on the first Monday in \_\_\_\_\_, \_\_\_\_ (year), that the errors alleged to have been committed may be considered and corrected.

\_\_\_\_\_  
Petitioner *pro se*

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Address

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Telephone Number

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY  
STATE OF GEORGIA

\_\_\_\_\_,  
Plaintiff in certiorari  
v.

CASE FILE  
NO. \_\_\_\_ (5) \_\_\_\_

\_\_\_\_\_,  
Defendant in certiorari  
and

\_\_\_\_\_,  
Respondent in certiorari

CERTIORARI BOND

Georgia, \_\_\_\_\_ County

Know all men by these presents, that \_\_\_\_\_, principal, and the undersigned security, are bound to pay \_\_\_\_\_ (the adverse party in the case), \_\_\_\_\_ dollars.

Witness the hand and seal of each party, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (year).

The condition of this obligation is such that whereas, said principal is suing out a writ of certiorari in the superior court of said state and county, in re \_\_\_\_\_ v. \_\_\_\_\_ from the \_\_\_\_\_ court;

Now, therefore, should said principal promptly pay the eventual condemnation money, together with all future costs in said matter as may be required by law, then this bond to be void; otherwise of full force and effect.

\_\_\_\_\_(SEAL)  
Principal

\_\_\_\_\_(SEAL)  
Security  
Attested and approved by:

\_\_\_\_\_  
Judge of \_\_\_\_\_ Court of \_\_\_\_\_

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY  
STATE OF GEORGIA

\_\_\_\_\_,  
Plaintiff in certiorari  
v. \_\_\_\_\_  
CASE FILE  
NO. \_\_\_\_\_  
\_\_\_\_\_,  
Defendant in certiorari  
and  
\_\_\_\_\_,  
Respondent in certiorari

CERTIFICATE OF PAYMENT OF COSTS

I, \_\_\_\_\_, the judge who presided in the case to which the foregoing petition and bond refer, hereby certify that all costs which have accrued on the trial of said case have been paid by petitioner for certiorari, and that such petitioner has given bond and security as required by law.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (year).

\_\_\_\_\_  
Judge of the \_\_\_\_\_ Court of \_\_\_\_\_  
(Officer whose decision or judgment is subject matter of complaint)

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY  
STATE OF GEORGIA

\_\_\_\_\_,  
Plaintiff in certiorari  
v. \_\_\_\_\_  
Defendant in certiorari  
and  
\_\_\_\_\_,  
Respondent in certiorari

CASE FILE  
NO. \_\_\_\_\_

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, Plaintiff pro se in certiorari, do hereby certify that I have this day served a copy of the petition for certiorari, a copy of the order sanctioning same and directing the issuance of a writ of certiorari, and a copy of the writ of certiorari, upon the Respondent, by serving a copy of same upon \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Plaintiff *pro se* in certiorari

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number