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COURTS

Voluntary Pre-Appeal Settlement Conference: Provide for Procedures

CODE SECTION:	O.C.G.A. § 15-3-13 (new)
BILL NUMBER:	HB 615
ACT NUMBER:	1448
SUMMARY:	The Act authorizes the establishment of voluntary pre-appeal settlement conference procedures by the court of appeals.
EFFECTIVE DATE:	February 1, 1989

History

The Georgia Court of Appeals, like many other courts, has experienced an increased workload in recent years.¹ The Georgia Constitution, through the two-term rule, mandates that a case must be processed by the court within two terms.² Thus, although the court technically does not have a backlog of cases, it has been termed the “busiest appellate court in the nation per judge.”³

In principle, a crowded docket can be alleviated either by increasing the number of judges assigned to the court or lowering the total number of cases heard before the court. The latter route is preferred by the court of appeals because a nine-judge panel is perceived as being large enough to be effective yet small enough to be manageable.⁴ HB 615 was introduced to cut down costs and delay for litigants and, if the process works, it will help alleviate the crowded docket of the court of appeals.⁵

1. Telephone interview with Chief Judge Birdsong, Georgia Court of Appeals (Apr. 21, 1988) [hereinafter Birdsong Interview].

2. GA. CONST. art. VI, § 9, ¶ 2.

3. Birdsong Interview, *supra* note 1.

4. *Id.* O.C.G.A. § 15-3-1(a), (d) (Supp. 1988) divides the court of appeals into three panels; a case may be heard by the court en banc to reconcile conflicts among the divisions. A panel larger than nine would be unwieldy. Birdsong Interview, *supra* note 1. O.C.G.A. § 5-6-35 (Supp. 1988), which lists the categories of cases to which granting certiorari is discretionary, can be used to reduce the number of cases heard by the court. For instance, appeals from superior court orders reviewing decisions made by the State Board of Workers' Compensation are discretionary.

5. Telephone interview with Representative Denmark Groover, House District No. 99 (Apr. 8, 1988) [hereinafter Groover Interview]; Telephone interview with Representative Charles Thomas, House District No. 69 (Apr. 8, 1988) [hereinafter Thomas Interview]. Representatives Groover and Thomas were sponsors of HB 615.

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The Act authorizes the establishment of "a voluntary preappeal settlement conference procedure" by rule by the court of appeals.⁶ The presiding judges at these settlement conferences will be either senior appellate court justices and judges or senior superior court judges.⁷ Because the timing of a pre-appeal conference might conflict with statutorily mandated procedures,⁸ a Senate committee substitute, which ultimately was enacted, also empowered the court "to provide by rule for the extension of time for the filing of the record, enumerations of error, briefs, or other matters for which time of filing is otherwise prescribed by statute."⁹

The Act also provides for review of the rules establishing the pre-appeal settlement conference, or subsequent amendments to these rules, by the State Bar of Georgia, the Judiciary Committee of the House of Representatives, and the Judiciary Committee of the Senate.¹⁰ Although the court of appeals must submit the rules and amendments to the State Bar and the Judiciary Committees at least thirty days prior to the effective dates, it need only "receive and consider such comments as shall be made by such organization or committees."¹¹

HB 615 was introduced upon the instigation and advice of the court of appeals¹² and was patterned after similar statutes in other states.¹³ The Act's purpose was to facilitate voluntary settlement of cases.¹⁴ The sponsors intended to create a formal channel through which disputing parties could try to negotiate settlement after the "sting of defeat and the flush of victory" at the trial court level subsided.¹⁵ An additional purpose, as

6. O.C.G.A. § 15-3-13(a) (Supp. 1988).

7. O.C.G.A. § 15-3-13(b) (Supp. 1988). O.C.G.A. §§ 15-3A-1 to -6, enacted by 1987 Ga. Laws 291, created the positions of senior appellate court justices and judges. The original version of HB 615 was introduced in the 1987 Georgia General Assembly and was contingent upon the creation of the senior appellate court justice and judge positions; absent their creation, the pool of judges authorized to conduct the settlement conferences was limited to senior superior court judges. HB 615, as introduced, 1987 Ga. Gen. Assem.

8. Groover Interview, *supra* note 5. *See, e.g.*, O.C.G.A. §§ 5-6-34 to -35 (Supp. 1988). The Georgia Court of Appeals Rules require the appellant and cross-appellant to file briefs within twenty days after the docketing of the case. Enumeration of errors must be incorporated in the brief of the appellant. GA. CT. APP. R. 14.

9. O.C.G.A. § 15-3-13(a) (Supp. 1988).

10. O.C.G.A. § 15-3-13(d) (Supp. 1988). The initial version of the Act did not contain this provision; the subsection was added by the House Committee on Judiciary. *Compare* HB 615, as introduced, 1987 Ga. Gen. Assem. *with* HB 615 (HCS), 1988 Ga. Gen. Assem.

11. O.C.G.A. § 15-3-13(d) (Supp. 1988).

12. Groover Interview, *supra* note 5.

13. Birdsong Interview, *supra* note 1. Retired Chief Judge Harry Spruce also reviewed other states' actions and advised the court. *Id.*

14. Groover Interview, *supra* note 5; Thomas Interview, *supra* note 5.

15. Groover Interview, *supra* note 5.

seen by one of the bill's sponsors, is to encourage the parties to stipulate to a narrower scope of review at the court of appeals level.¹⁶ Also, if a settlement conference is requested by the parties, records of the trial court proceedings are not sent to the court of appeals until the conference proceedings have occurred.¹⁷ Thus, settling parties save the expense of sending the record to the court of appeals while maintaining their right to appeal.

HB 615 was first introduced in the 1987 General Assembly but failed to pass out of the House Committee on Judiciary. Although the bill had no substantial opposition, some concern was expressed that a judge might be prejudiced against a party who chose not to participate in a voluntary settlement conference.¹⁸ The conference procedures, however, will prevent the court of appeals from knowing which parties participated in voluntary settlement conferences.¹⁹ The legislature granted \$50,000 to fund the establishment of these procedures.²⁰

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16. Thomas Interview, *supra* note 5. However, another sponsor, Representative Groover, indicated that HB 615 is not intended to address the scope of review issue. Groover Interview, *supra* note 5. The procedures include the filing of a settlement conference information sheet. Birdsong Interview, *supra* note 1.

17. Birdsong Interview, *supra* note 1.

18. Groover Interview, *supra* note 5.

19. Birdsong Interview, *supra* note 1. Because the appellate proceedings and the conference proceedings operate separately, this problem should not develop. *Id.*

20. See *Voluntary Pre-Appeal Settlement Conference*, Ga. St. Bar News, Mar.—Apr. 1988, at 12, col. 4.