

Rules
of the
Court of Appeals
of the
State of Georgia

January 1, 1995

**RULES
COURT OF APPEALS OF GEORGIA**

(These rules are not intended to reiterate all applicable laws. Where the word "counsel" has been utilized, this will include pro se parties.)

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I. GENERAL

- Rule 1.** (a) All filings, documents, motions, briefs, requests and communications relating to appeals shall be in writing, shall be filed with the Clerk's office and shall show that copies have been furnished to opposing counsel. Service shall be shown by written acknowledgement, certificate of counsel or affidavit of server, to include the mailing address of all opposing counsel. All signed documents shall include the State Bar of Georgia membership number of all submitting attorneys.
- (b) All documents filed with the Court, excluding letters, shall be typed or printed on non-transparent, letter size (8 1/2" x 11") white paper and bound at the top or sides with staples or round head fasteners and all matters contained therein, including quotations and footnotes, shall have no less than double spacing between the lines. The type size shall not be smaller than standard pica or elite type or 10 point courier font. All documents filed with this Court, excluding letters, shall be backed with a non-glossy, white manuscript cover of recyclable paper, heavier than regular stationery-type paper.
- (c) All reference to counsel in these rules shall include pro se parties.
- Rule 2.** The Clerk's office shall be open Monday through Friday from 8:30 a.m. to 4:30 p.m. E.S.T./E.D.T. The address is: Clerk, Court of Appeals of Georgia, 334 State Judicial Building, Atlanta, Georgia 30334.
- Rule 3.** When an expiration date falls on Saturday, Sunday, or an official holiday, the time is extended to the next business day.
- Rule 4.** A document shall be deemed filed when it is physically delivered to the Clerk's office, with sufficient costs, if applicable, and clocked in by the Clerk's office staff. A document is also deemed filed in the Clerk's office when it is deposited in the United States Postal Service registered or certified mail, provided that the official United States Postal Service postmark date appears on the transmittal envelope or container.

Motions for reconsideration are deemed filed only on the date they are physically received in the Clerk's office.

Rule 5 Costs in all cases are \$80.00 unless a sufficient pauper's affidavit is filed or contained in the record. Costs shall be paid upon filing of applications or, in direct appeals, upon filing of briefs. Appellants are liable for the costs when the notice of appeal is received by the Clerk's office. The Clerk shall not file any matter unless the costs have been paid or a sufficient pauper's affidavit has been filed.

Rule 6 All documents filed with the Clerk, except enumeration of errors and letters, which are not letter briefs, shall include an original and two copies.

Rule 7 Breach of any rule of the Court of Appeals or failure to comply with an order of this Court subjects the offender to contempt and may subject the appeal to dismissal or cause appellee's brief to be stricken. The Court may, upon a finding of conduct constituting contempt, impose a fine not to exceed \$1,000.00 against each contemnor or revoke the license to practice in this Court, or both.

Rule 8 Cause for disqualification or recusal shall be brought to the attention of the Clerk as soon as practicable. See Rule 44.

II. ATTORNEYS

Rule 9 Attorneys.

Application and Oath.

Any member of the State Bar of Georgia may be admitted to practice in this Court upon written application, and the certificate of at least two attorneys of this Court, that such member is of good private and professional character. The oath which is required to be taken, in open Court or before a Judge in Chambers, and which shall be subscribed in a book to be kept by the Clerk and known as the "Roll Book," is as follows:

"I do solemnly swear (or affirm) that I will demean myself as an attorney or counsellor of this Court truly and honestly, justly and uprightly, and according to law; and that I will support the Constitution of the State of Georgia and the Constitution of the United States. So help me God."

- (b) **Fee.**
The fee for admission is \$30.00, payable to the Clerk who will issue a license under the seal of the Court as evidence of applicant's authority to practice.
- (c) **Appearance by Courtesy.**
As a matter of professional courtesy, a visiting attorney from another state, or from a district or territory, if admitted to practice in the highest court of the state, district, or territory of such attorney's residence, by leave of court, may be heard as associate counsel or counsel in a single case, without being admitted as a regular practitioner in this Court.
- (d) **Agreements or Consents to be in Writing.**
No agreement or consent will be recognized unless it is in writing, signed by the parties or their counsel, and filed with the Clerk.
- (e) **Withdrawal or Substitution of Counsel**
Any withdrawal or substitution of attorneys of record in the Court shall be communicated to the Court in writing with a copy to substituted counsel, opposing counsel and the withdrawing or substituting attorney's client.

**Rule 10. Personal Remarks.
Opposing Counsel or Judge.**
Personal remarks which are discourteous or disparaging to opposing counsel or to any judge are strictly forbidden, whether oral or written.

III. DOCKETS; CALENDARS; HEARINGS

- Rule 11. Appeals, How Entered.**
- (a) **Docketing.**
No appeal shall be docketed until the notice of appeal or notice of cross-appeal and a record, and transcript if requested, are filed in the Clerk's office.
 - (b) **Transfer of Cases.**
Whenever an appeal or application filed in this Court is within the jurisdiction of the Supreme Court, such appeal or application shall be transferred by order to that court.

(c) Transferred Cases.

Appeals transferred to this Court from the Supreme Court shall be docketed as of the date of their reception in this Court.

(d) Docketing of Cross-Appeal.

A cross-appeal shall be entered upon the docket for the same term as the appeal. No cross-appeal shall be docketed until the main appeal has been entered.

Rule
12.

Closing of the Dockets.

The docket for the January, April, and September terms shall close on the 15th day of January, May, and September, respectively, at noon. By order, a closed docket may be opened when expedient for the docketing of a case or cases so that a judgment may be rendered by the Court at the earliest practicable date.

Rule
13.

Notice of Docketing.

Upon the docketing of every appeal and application for appeal, the Clerk shall mail notice of the docketing date and schedule for briefing to all counsel. The notice shall include a statement that failure to file the enumeration of errors and appellant's or cross-appellant's brief within the time required, except as extended upon motion for good cause shown, shall subject the appeal to dismissal. The notice shall also state that: Failure to timely file responsive briefs may result in their non-consideration; a brief shall be filed by the appellee in all criminal appeals when the State is the appellee; and upon failure to file such brief, the State's representative may be subject to contempt. See Rule 26.

Rule
14.

(a) Notice of Call.

The Clerk shall mail the calendar to counsel in each appeal to be orally argued at the addresses shown on the notice of appeal, at least 14 days prior to the date the call is to begin.

(b) Conflicts - State and Federal Court.

(1) Counsel shall not be deemed to have a conflict unless such counsel:

- (i) Is lead counsel in two or more of the actions affected; and

(ii) Certifies that the matters cannot be adequately handled by other counsel.

(2) When there is an apparent conflict:

(i) Appellate arguments prevail over trials, hearings and conferences.

(ii) The action first filed takes precedence.

(iii) Felony actions shall prevail over civil actions.

The courts are assigned the following priorities:

(aa) United States Supreme Court.

(bb) Supreme Court of the State of Georgia.

(cc) Federal Court of Appeals and State Court of Appeals.

(dd) United States District Courts and Superior Courts.

(ee) Federal Magistrate Courts and State Courts.

(ff) Probate, Juvenile and Magistrate Courts.

(3) The Clerk shall resolve conflicts so as to accommodate all parties insofar as possible.

(4) Using the above criteria, the only time a conflict exists is when the actions are in courts of equal priority, of the same type and were filed on the same day. When such conflict exists, counsel shall give prompt written notice of the conflict to opposing counsel and to the clerk of each court.

(5) When it is evident that counsel's presence is required in more than one court on the same day and no conflict actually exists under the above criteria, counsel shall nevertheless inform all courts concerned giving the style

of the case and the date of filing so that judges of the respective courts will be properly informed.

Rule 15

No Prosecution and Penalties.

Cases Not Prosecuted.

(a)

On the call of the case for argument, if the appellant does not appear, and has not filed a brief, the Court shall dismiss the appeal for want of prosecution and it will not be reinstated except for providential cause. If the appellee or appellee's counsel shall appear, such appellee or counsel may move to reopen the record and insist upon an affirmance of the judgment below.

(b)

Appeals Deemed Frivolous.

The panel of the Court ruling on a case, with or without motion, may, by majority vote, impose a penalty not to exceed \$1,000 against an appellant in any civil case in which there is a direct appeal, application for discretionary appeal, application for interlocutory appeal, or motion which is determined to be frivolous.

EXTENSION OF TIME FOR NOTICE OF APPEAL, ETC.

Rule 16

Extension of Time for Filing.

(a)

Pursuant to the provisions of OCGA § 5-6-39, requests for extensions of time, which must be in writing, may be made only upon the showing that a bona fide effort has been made to obtain the extension from the trial court and the reason why it could not be obtained.

(b)

No extension of time shall be granted for interlocutory or discretionary applications.

(c)

All extensions of time shall be by written order of the Court and no oral extension of time shall be recognized.

V. RECORDS AND TRANSCRIPTS

Rule 17

Duty of Clerks of Trial Courts.

The clerk of the trial court shall certify and transmit to the Clerk of this Court the original transcript and copies of all records as required within the time prescribed by statute. Transmittal shall be by the clerk or deputy personally or by

first class United States mail or express mail, charges prepaid. Transmittal by a party or attorney is prohibited.

Rule 18. Preparation of Records and Transcripts.

Records and transcripts shall be printed on one side of white paper not less than letter size of good quality with ample spacing (at least double spaced) and margins so that they may be read easily. The margin at the top shall be at least three inches. Type size shall not be smaller than standard pica or elite type or 10 point courier font.

Rule 19. Arrangement of Record.

The record with pages numbered at the bottom and a manuscript cover shall be arranged as follows:

- (1) Index;
- (2) Notice of Appeal;
- (3) Other items in chronological order; and
- (4) Clerk's certificate.

Voluminous records may be bound in separate parts but each part shall be certified separately.

Rule 20. Transmission of Transcript.

The original transcript shall be a separate document and not attached to the record. It should show the style of the case and an index. Voluminous transcripts may be bound in separate parts. The reporter and clerk shall certify each part.

Rule 21. Physical Evidence.

Any party relying on physical evidence may include as a part of the transcript a photograph of the evidence, together with an explanation or description if deemed necessary, in lieu of transmitting the original evidence. If the relying party deems the original evidence to be of such importance that a photograph or a description cannot suffice to demonstrate such party's contention, such party may apply to the trial court for an order directing the transmission of the evidence to this Court. In no event, unless directed by this Court, shall physical evidence be sent up which is bulky, cumbersome, or

expensive to transport, or which, by reason of its nature, is dangerous to handle.

VI. ENUMERATION OF ERRORS

Rule
22

Filing; Preparation.

(a) Time of Filing.

The enumeration of errors shall be filed with the Clerk of this Court within 20 days after the case is docketed.

(b) Physical Preparation.

The enumeration of errors shall follow generally the rules for the physical preparation of briefs in regard to paper size and quality, double spacing, margins, etc.

(c) Statement of Jurisdiction.

Following the enumeration of errors and immediately preceding the signature of counsel, there must be a statement of the reasons why the Court of Appeals and not the Supreme Court has jurisdiction of the appeal, with citation of the part(s) of the record or transcript showing jurisdiction.

(d) Review.

The enumeration of errors shall be deemed to include and present for review all judgments necessary for a determination of the errors specified.

VII. BRIEFS

13. Preparation.

(a) Paper, Spacing.

All briefs shall be filed in conformity with Rule 1 (a) and (b).

(b) Margins.

Writing shall be on only one side of each sheet with a margin of at least two inches at the top, and a margin of least one and one-half inches on the left side of each page.

(c) Citations.

All citations of cases shall be by name of the case as well as by volume and page of the Official Report (Harrison or

Darby). Cases not yet reported shall be cited by the Court of Appeals or Supreme Court case number and date of decision.

- (d) **Pages to be Numbered.**
The pages of each brief shall be sequentially numbered with Arabic numerals.
- (e) **Limitation as to Length.**
Briefs shall be limited to 30 pages in civil cases and 50 pages in criminal cases except upon written application directed to the Clerk and approved by the Court.
- (f) **Address of Defendant.**
The address of the defendant in a criminal case shall appear on the brief and the Court shall be notified of any change of address.

Rule 24. Supplemental Briefs.

Briefs shall be limited to an appellant's brief, an appellee's brief, and a reply brief. Supplemental briefs may be filed only by leave of the Court. Counsel may file a motion for permission to file supplemental briefs. Contemporaneously with filing a motion, counsel may file, as a separate document, an original and two copies of the supplemental brief.

When pertinent and significant authorities come to the attention of a party subsequent to filing such party's brief, or after oral argument but before decision, a party may, without leave of court, properly inform the Clerk by letter, with copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain. The letter shall, without argument, state the reasons for the supplemental citations. Any response shall be made promptly and similarly limited.

Rule 25. Amicus Curiae Briefs.

Amicus curiae briefs may be filed without leave of Court, disclosing the identity and interest of the person or group on whose behalf the brief is filed and limited to issues properly raised by the parties.

Rule
26.

Time of Filing; Contempt; Dismissal; Service.

- (a) Appellant's and cross-appellant's briefs and enumerations of error shall be filed within 20 days after the appeal or cross-appeal is docketed. Failure to file within that time, unless extended upon motion for good cause shown, shall subject the civil appeal, and may subject the criminal appeal, to dismissal, and may subject the offender to contempt. See Rule 7 and Rule 13.
- (b) Appellee's and cross-appellee's briefs shall be filed within 40 days after the appeal is docketed or 20 days after the filing of the brief being responded to, whichever is later. Failure to timely file may result in non-consideration of the brief, and failure of the State to file an appellee's brief in an appeal in a criminal case may subject its representative to contempt. Issues raised on appeal and cross-appeal may be argued in one brief, but this shall not extend the time for filing. See also Rule 13.
- (c) Appellant or cross-appellant may file a reply brief within ten days from the date of filing of appellee's or cross-appellee's brief.
- (d) In a criminal case counsel shall, by letter to the Clerk with copy to opposing counsel, state if appellant is incarcerated and if this status changes during the pendency of the appeal.

Rule
27.

Structure and Content.

Appellant; Cross-Appellant.

The brief of appellant or cross-appellant shall consist of three parts:

- (1) Part One shall contain a succinct and accurate statement of the proceedings below and the material facts relevant to the appeal and a citation of such parts of the record or transcript essential to a consideration of the errors complained of, and a statement of the method by which each enumeration of error was preserved for consideration.
- (2) Part Two shall consist of the enumeration of errors.

(3) Part Three shall contain the argument and citation of authorities. It shall also include a concise statement of the applicable standard of review with supporting authority for each issue presented in the brief.

(b) **Appellee; Cross-Appellee.**

The brief of appellee or cross-appellee shall be subdivided in the following manner:

(1) Part One shall point out any material inaccuracy or incompleteness of statement in the appellant's brief and any additional statement deemed necessary, plus such additional parts of the record or transcript deemed material. Failure to do so shall constitute consent to a decision based on the appellant's statement. Except as controverted, appellant's statement of facts may be accepted by this Court as true.

(2) Part Two shall contain appellee's argument and the citation of authorities as to each enumeration of error. It shall also include the standard of review if different from that contended by the appellant.

(c) **General Provisions.**

(1) **Sequence of Argument.**

The sequence of argument or arguments in the briefs shall follow the order of the enumeration of errors, and shall be numbered accordingly.

(2) **Unsupported Claim of Error Treated as Abandoned.**

Any enumeration of error which is not supported in the brief by citation of authority or argument shall be deemed abandoned.

(3) **References to Record or Transcript.**

(i) Each enumerated error shall be supported in the brief by specific reference to the record or transcript. In the absence of such reference, the Court will not search for or consider such enumeration.

- (ii) A contention that certain matters are not supported by the record may be answered by reference to particular pages where they appear.

VIII. ARGUMENT

Rule
28.

Request and Time.

- (1) Unless expressly ordered by the Court, oral argument is never mandatory and argument may be submitted by briefs only. A case will be placed on the calendar for oral argument only upon the request of either party within 20 days from the date the case is docketed in this Court, or upon order of the Court.

A request for oral argument shall be filed as a separate document, directed to the Clerk, certifying that the opposite counsel has been notified of the intention to argue the case orally and that inquiry has been made whether the opponent intends also to argue orally. The request shall certify further that opposing counsel does or does not desire to argue orally. The request shall show service thereof on the opposing counsel. The request shall identify counsel who is scheduled to make the oral argument. Any change shall be communicated in writing to the Clerk as soon as practicable.

After either side has requested oral argument, it may be waived by either side, but waiver by the requester does not remove oral argument from the calendar. Argument will not be allowed on behalf of any party whose brief has not been timely filed, unless permission is granted by the Court. Counsel requesting extension of time to file briefs waive oral argument if the extension is beyond the end of the term.

- (2) Argument is limited to 30 minutes for each case, 15 minutes on each side, unless by special leave an extension of time is granted. No additional time will be granted except on application made in writing at least 5 days before the date set for the call of the case. If additional time is granted, the case will be placed at the end of the calendar unless otherwise ordered by the Court. A companion case or cross-appeal may, in the

discretion of the Court, be treated as a separate case for oral argument if counsel so requests prior to commencing argument. Where there are third parties or additional parties with divergent interests, additional time may be requested and granted as set out above.

- (3) Appeals in which oral argument has been requested pursuant to Rule 28 (a) will be assigned to the calendar in the order in which they appear upon the docket, unless otherwise ordered. When a case has been reached in its order on the calendar, it will not be postponed except for good reason shown.
- (b) **Number of Arguments.**
When both sides of an appeal are argued, only two counsel on each side will be heard. When only one side of an appeal is argued, or when arguments are to be made on behalf of more than two parties, no more than one counsel per party shall be heard.
- (c) **Opening and Concluding; Rebuttal.**
Appellant has the right to open and conclude the arguments. Appellant's conclusion shall be confined to matters covered in argument of opposing counsel.
- (d) **Courtroom Decorum.**
(1) Counsel appearing for oral argument shall check in with the Clerk in the courtroom at 9:30 a.m. on the date of oral argument specifying who will argue and for how long.
(2) Talking, reading newspapers or other material, and audibly studying briefs and arranging papers are prohibited in the courtroom. The lawyers' lounge has been provided for this purpose.
- (e) **Presence of Counsel.**
Oral argument is waived if counsel is not actually inside the courtroom when the case is formally called in its order for argument.
- (f) **Limited Argument.**
The Court will call cases out of order listed on the calendar in which all counsel appearing for argument inform the Clerk that the time of argument will be limited to five minutes for

each side or ten minutes for each side. Five minute cases will be called before ten minute cases and both will be called before fifteen minute cases.

29. Hearing by Quorum.

Whenever a division of the Court is on the bench for the purpose of hearing oral argument, and a quorum of the division is present, which shall consist of two of the three Judges, the division shall proceed with the call of the docket. In no case shall counsel have the right to demand that the oral argument be heard by a full division merely because of the absence of one member of the division.

IX. APPLICATION FOR INTERLOCUTORY APPEALS

30. Applications.

An application for leave to appeal an interlocutory order will be granted only when it appears from the documents submitted that:

The issue to be decided appears to be dispositive of the case;
or

The order appears erroneous and will probably cause a substantial error at trial or will adversely affect the rights of the appealing party until entry of final judgment in which case the appeal will be expedited; or

The establishment of precedent is desirable.

31. Time of Filing.

An application for interlocutory appeal shall be filed in this Court within ten days of the granting of the trial court's certificate for immediate review. The certificate is deemed granted on the date it is filed in the trial court clerk's office.

Applications to appeal interlocutory orders of which the Supreme Court has jurisdiction may be transferred to that Court no fewer than ten days before the last day to act thereon, or may be dismissed for improper filing.

Applications for interlocutory appeal shall contain a jurisdictional statement and have attached a stamped "filed" copy of the court's order to be appealed and a stamped "filed" copy of

the certificate of immediate review. Copies of all materials from the record, which materials must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced, shall be tabbed and indexed. If the application is not tabbed and indexed, it will not be docketed, but will be returned for correction. If the application is granted, appellant must file a notice of appeal as required by OCGA § 5-6-34 (b).

X. PETITION TO ALLOW AN APPEAL

Rule 32. Leave to Appeal.

- (a) Applications for discretionary appeal pursuant to OCGA § 5-6-35 shall have copies of all material from the record tabbed and indexed. If it is not tabbed and indexed, the petition will not be docketed but will be returned for correction. The material must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced.
- (b) Discretionary appeals must have a stamped "filed" copy of the order from which the appeal is sought in the application.

XI. OPINIONS AND JUDGMENTS

Rule 33. Showing of Concurrence or Dissent.

Each judgment shall show on its face the votes, nonparticipation, or disqualification of each judge.

(a) **Judgment as Precedent.**

A judgment which is fully concurred in by all Judges of the division is a binding precedent; if there is a special concurrence without a statement of agreement with all that is said in the opinion or a concurrence in the judgment only, the opinion is a physical precedent only. If the appeal is decided by the whole Court, a full concurrence by a majority of Judges is a binding precedent, but if the judgment is made only by special concurrences without a statement of agreement with all that is said in the opinion or by concurrence in the judgment only, there being general concurrence by less than a majority of the Judges, it is a physical precedent only.

(b) Unreported Opinion.
An unreported opinion is neither a physical nor binding precedent but establishes the law of the case as provided by OCGA § 9-11-60 (h).

Rule 34. Reporting of Opinions.
Opinions are reported except as otherwise designated by the Court.

The official reports shall list the cases in which opinions were written but not officially reported and shall indicate the authors and participants in the opinions.

Rule 35. Copies of Opinions.
As soon as practicable after judgment, the Clerk shall furnish, without charge, one copy of the opinion to counsel for each party and to the trial judge. If a party is represented by more than one counsel, the brief shall designate who is to receive the copy. Additional copies cost \$4.00 for the first ten pages and \$1.00 for each additional page.

Rule 36. Affirmance Without Opinion, When Rendered.
Cases in which:

- (1) the evidence supports the judgment;
- (2) no reversible error of law appears and an opinion would have no precedential value;
- (3) the judgment of the court below adequately explains the decision; and/or
- (4) the issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief,

may be affirmed without opinion. They have no precedential value.

XII. RECONSIDERATION

Rule 37. Motions for Reconsideration.

(a) Physical Preparation.
Motions for reconsideration shall be prepared in accordance with Rule 23.

- (b) **Time of Filing.**
Motions for reconsideration must be filed during the term at which the judgment or dismissal sought to be reviewed was rendered and before the remittitur has been forwarded to the clerk of the trial court and, in any event, must be filed within ten days from the rendition of the judgment or dismissal. No extension of time shall be granted except for providential cause on written application made before the expiration of ten days. See Rule 4.
- (c) **Time May be Limited.**
The Court may by special order in any case direct that the remittitur be transmitted to the clerk of the trial court immediately after the rendition of the decision and judgment, or at any other time, without awaiting the expiration of ten days, and may by special order limit the time within which a motion for reconsideration may be filed to any period less than ten days.
- (d) **Second Motion.**
No party shall file a second motion for reconsideration unless permitted by order of the Court.
- (e) **Basis for Granting.**
A reconsideration will be granted on motion of the requesting party, only when it appears that the Court overlooked a material fact in the record, a statute or a decision which is controlling as authority and which would require a different judgment from that rendered, or has erroneously construed or misapplied a provision of law or a controlling authority.
- (f) **Opinion May be Revised Without Grant of Motion.**
If, upon the consideration of a motion for reconsideration, the Court decides its judgment as rendered is correct but that some revision of the opinion is appropriate, it may revise the opinion accordingly, without granting reconsideration. In this event the Court shall so advise the Clerk, who shall then promptly notify counsel as to the alterations made.
- (g) **Sua Sponte Revision.**
The Court may at any time reconsider and revise its opinions prior to the printing thereof in the official reports.

Voting on Motions, Effect.

A motion for reconsideration shall be voted on by the Judges who voted on the original opinion. If there is a dissent on the motion for reconsideration, the motion shall be voted on by the whole court.

XIII. CERTIORARI

Rule
38.

Applications, How Made.

(a) Application to the Georgia Supreme Court for writ of certiorari shall be made under rules prescribed by that Court within ten days after the judgment in this Court or after denial of a motion for reconsideration. Counsel may file motion for reconsideration with this Court but are not required to do so. Such a motion is not required in order to pursue an application for writ of certiorari. Notice of intention to apply to the Georgia Supreme Court or the United States Supreme Court for writ of certiorari shall be filed in this Court. Simultaneously with the filing of the application for certiorari, a copy of such shall be filed with this Court.

(b) Petition to the United States Supreme Court shall be made under rules prescribed by that Court. Notice of intention to petition for certiorari shall be made to this Court not later than 20 days following denial of certiorari by the Georgia Supreme Court. Simultaneously with the filing of the petition for certiorari, in the United States Supreme Court, a copy of such shall be filed with this Court.

XIV. REMITTITUR

Rule
39.

Transmittal.

Remittiturs shall be transmitted to the clerk of the trial court as soon as practicable after the expiration of ten days from the date of the judgment unless otherwise ordered or unless a motion for reconsideration or notice of intention to apply to the Supreme Court of Georgia for writ of certiorari has been filed.

Notice of intention to apply to the Supreme Court of the United States for writ of certiorari will not automatically stay the remittitur.

XV. SUPERSEDEAS

Rule 40. Supersedeas.

(a) Civil Cases.

The notice of appeal filed as provided in OCGA §§ 5-6-37 and 5-6-38 shall serve as supersedeas upon payment of all costs in the trial court by the appellant. Upon motion by the appellee, made in the trial court before or after the appeal is docketed in the appellate court, the trial court may require supersedeas bond to be given with such surety and in such amount as the trial court may require.

(b) Emergencies.

In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. Generally, no order will be made or direction given in an appeal until it has been docketed in this Court.

XVI. MOTIONS

Rule 41. Preparation and Filing.

(a) Filing in Triplicate.

Motions shall be filed in triplicate as set out in Rule 6.

(b) Physical Preparation.

Motions shall be prepared in accordance with Rule 23.

(c) Motions to Dismiss.

Notice of a motion to dismiss and of the grounds thereof shall be given in writing to counsel for the appellant by service made and shown as required in Rule 1 (a). If such notice cannot be given, the motion will be entertained and the Court in its discretion will give such direction as may seem proper. Whenever it appears to the Court that it has no jurisdiction of a pending appeal, said case will be dismissed or transferred to the Supreme Court, as the facts and/or law may require.

(d) Reconsideration.

See Rule 37.

(e) Motion to Withdraw Appeal.

Whenever appellant or cross-appellant decides not to pursue an appeal, such party shall promptly file a motion to withdraw appeal. In a criminal case the motion shall include an affidavit from defendant agreeing to the withdrawal of the appeal; should the defendant refuse to provide such affidavit, that fact shall be made known to the Court and the grounds for the withdrawal of the appeal shall be stated in the motion.

XVII. OFFICE PAPERS

Rule
42.

Papers shall not be taken from the Clerk's office without leave of the Court, and when leave is granted, the party receiving the paper shall receipt the Clerk therefore. The Clerk may deliver records to the Clerk of the Supreme Court.

XVIII. PARTIES

Rule
43.

Parties, How Made.

(a) Suggestion of Death of Party.

The death of a party in a pending appeal may be suggested by counsel for either side at any time.

(b) Legal Representative May Volunteer.

The legal representative of the deceased party may voluntarily become a party to the appeal at any time.

(c) Temporary Administrator.

A temporary administrator is regarded as a competent party.

XIX. DISQUALIFICATIONS.

Rule
44.

Disqualifications and Recusals.

(a) Any motion to recuse or disqualify a judge in a particular case shall be filed in writing, and shall contain such evidence and affidavits which shall fully assert the facts upon which the motion is founded. Such motion shall be filed within 20 days of date of docketing, unless good cause be shown for failure to meet such time requirements.

(b) The affidavit shall clearly state the facts and reasons for the belief that bias or prejudice exists, being definite and specific

as to time, place, persons and circumstances which demonstrate either bias in favor of any adverse party or prejudice toward the moving party or systematic pattern of prejudicial conduct. Allegations consisting of conclusions and opinions shall not be legally sufficient to support the motion or warrant further proceedings.

- (c) The determination of the recusal motion shall be made upon the written record and no hearing or oral argument shall be permitted on the motion.

XX. EXPEDITED APPEALS UNDER THE PARENTAL NOTIFICATION ACT.

Rule 45.

- (a) This rule is adopted under the authority of the Georgia Constitution, Article 6, § 1, ¶ 4 (1983); OCGA §§ 15-1-5 and 15-11-114 (e) to provide for the expedited consideration of appeals under the "Parental Notification Act." (OCGA § 15-11-110 et seq.)
- (b) Any minor to whom a Juvenile Court has denied a waiver of notice under OCGA § 15-11-114 (d) may obtain an expedited appeal to this Court. For the purpose of this rule, in computing time, Saturdays, Sundays and holidays shall be included. Rule 3 shall govern in the event an expiration date falls on such a date.
- (c) A minor seeking an expedited appeal shall file a Notice of Appeal and a certified copy of the order denying waiver of notice with the Clerk of this Court. A copy of the Notice of Appeal must also be filed with the Juvenile Court. The name, address and telephone number of the Guardian Ad Litem and any Counsel of Record must be included with the Notice of Appeal. Upon receipt of the Notice of Appeal, this Court will issue an order to the Juvenile Court directing that the record and transcript of the hearing be transmitted to and received by this court within five (5) days from the date of filing of the Notice of Appeal with this Court. An enumeration of errors shall be filed within the time period for the filing of the record. If a brief is desired, it shall also be filed within the time period for the filing of the record. No filing fee is required.

- (d) The record of the Juvenile Court shall be certified by the Clerk of the Juvenile Court and transmitted to this Court under seal.
- (e) The Clerk shall assign the appeal to a panel of this Court, who shall take the matter under consideration and shall issue its decision within five (5) days of receipt of the record.
- (f) In order to expedite further appellate review, a motion for reconsideration shall not be required. However, if the decision of this Court affirms the judgment of the Juvenile Court, the minor may file a motion for reconsideration and the same will be governed by Rule 37, except that such a motion shall be filed within five (5) days from the date of the decision of this Court and may be filed out of term. Any motion for reconsideration will be decided by the Court within five (5) days of filing thereof.
- (g) If the decision of this Court reverses the judgment of the Juvenile Court, the remittitur will be forwarded to the Clerk of the Juvenile Court immediately after the rendition of the decision. If the decision of this Court affirms the judgment of the Juvenile Court, the remittitur shall be transmitted to the Clerk of the Juvenile Court as soon as practicable after the expiration of five (5) days from the date of the judgment unless otherwise ordered or unless a motion for reconsideration or notice of intention to apply to the Supreme Court for writ of certiorari has been filed.
- (h) Upon good cause shown, the Court will enter such orders as will further expedite the processing of these cases.
- (i) In order to invoke the foregoing special procedures, the Notice of Appeal must be filed within five (5) days of receipt by the minor of the Juvenile Court's order.
- (j) All pleadings, briefs, orders, transcripts, exhibits and any other written or recorded material that are part of the record shall be considered and treated by the Court as confidential. Upon conclusion of the appellate proceedings the record will be sealed, and the contents of the record shall not be disclosed, except upon order of this Court or the Supreme Court of Georgia.

XXI. APPELLATE SETTLEMENT CONFERENCE

Rule 46.

1. GENERAL PROVISIONS.

(a) Authority and Purpose of Rule.

This rule is adopted under the authority of the Georgia Constitution Article 6, § 1, ¶ 4 (1983); OCGA §§ 15-1-5 and 15-3-13. The procedure is intended to afford a realistic consideration of the possibility of settlement of the case or alternatively, the simplification of issues and record on appeal prior to docketing of the appeal; to establish dates upon which the various actions are to be taken in the submission and pursuit of an appeal; to obtain appropriate stipulations of fact; and to take such other actions as may reduce cost and aid the speedy and just disposition of cases.

(b) Appeals to Which Settlement Conference Procedure Applies.

This procedure shall apply only to timely civil appeals in which appeal is permitted to the Georgia Court of Appeals. Criminal cases, applications for discretionary appeals and interlocutory appeals, and appeals which have been untimely filed shall not be subject to this procedure. If a notice of appeal is filed pursuant to the granting of a discretionary or interlocutory appeal, then the Settlement Conference Information Form must be filed and this rule applies.

2. SETTLEMENT CONFERENCE INFORMATION FORM.

(a) Trial Court Clerk to Furnish Forms.

In all civil appeals subject to this procedure, upon the filing of a notice of appeal with the trial court, the clerk of the trial court shall furnish immediately to all appellants, by hand delivery if the notice of appeal is filed in person by a party or counsel therefore or by regular mail, and to appellees by regular mail, a copy of the Settlement Conference Information Form.

(b) Forms; Time for Completion; Return.

Within 12 days after the filing of the Notice of Appeal, the appellant and appellee shall each file with the clerk of the trial court an appropriately completed Settlement Conference

Information Form and serve a copy of said form upon the opposite party and the Settlement Conference Clerk at the Court of Appeals.

Acceptance or Rejection of Settlement Conference; Costs.

Either party may specify on the appropriate Settlement Conference Information Form the acceptance or rejection of the utilization of a settlement conference, either at the time of filing or at any time during the process of the settlement conference hearings; provided, however, that if rejected after the time of filing, costs up to the time the Settlement Conference Judge determines the Conference process is ended, must be paid, the amount and the party or parties to be obligated to be determined by the Settlement Conference Judge.

Contents of Form.

- (1) When Settlement Conference Procedure is Rejected.
The Settlement Conference Information Form shall include a rejection provision which, when chosen by either party in accordance with Section 2 (c) at the time of filing, eliminates any necessity for executing a statement of disputed facts or issues of law. If settlement negotiation is rejected at the time of filing, only the style and number of the case and the election to reject must be completed on the Settlement Conference Information Form.
- (2) When Settlement Conference Procedure is Elected.
The following form shall be completed, signed, and filed:

SETTLEMENT CONFERENCE INFORMATION FORM

STATE OF GEORGIA

[NOT TO BE A PART OF THE RECORD ON APPEAL. RULE 52 (2) (f)]

TRIAL COURT CASE NO. _____

COUNTY _____ COURT _____ DATE NOTICE OF APPEAL FILED _____

STYLE OF CASE*

VS

APPELLANTS

APPELLEES

ATTORNEY
(Name, Address, Tel. No.)

ATTORNEY
(Name, Address, Tel. No.)

Ga. Bar No. _____ Ga. Bar No. _____

Attorney For: _____ Attorney For: _____

The (appellant) (appellee) (elects) (rejects) participation in a settlement conference hearing in an attempt to settle the litigation, establish facts or limit issues on appeal.

Attorney on Behalf of Litigant

*If additional space is needed, please use additional sheets and attach hereto.

NOTE: File the original of this form with the clerk of the trial court and serve a copy of same upon the opposite party and a copy to the Settlement Conference Clerk at the following address: Settlement Conference Clerk, Appellate Settlement Conference, Court of Appeals of Georgia, 334 State Judicial Building, Atlanta, Georgia 30334, (404) 851-8498.

If election to participate in the Settlement Conference Procedure is made, the following information must be provided and returned to the Clerk of the Trial Court with copies to the opposing party and the Settlement Conference Clerk within 12 days after the filing of the Notice of Appeal. Pursuant to OCGA § 15-3-13 (a) and Rule 52 of the Court of Appeals, the statutory time for preparation and transmittal of the transcript and record will be tolled temporarily and will resume by order of the Settlement Conference Judge at the conclusion of the Settlement Conference Procedure.

CASE DESCRIPTION

NATURE OF ACTION

- | | |
|----------------|-----------------------------|
| 1 () CONTRACT | 7 () GRANT/DENIAL MOTION |
| 2 () TORT | FOR SUMMARY JUDGMENT |
| 3 () PROPERTY | 8 () GRANT/DENIAL MOTION |
| 4 () OTHER | OTHER THAN SUMMARY JUDGMENT |
| 5 () JURY | 9 () DATE OF FINAL |
| 6 () NON-JURY | DISPOSITION ____/____/____ |
-
-

1. ABBREVIATED STATEMENT OF CASE (NATURE) — Brief Description of the Controversy — Include any Findings of Fact (or Statements of Undisputed Facts in summary judgment cases) and Conclusions of Law made by the Trial Court (copy may be attached).

2. ABBREVIATED STATEMENT OF TRIAL COURT JUDGMENT, DECISION AND ORDER FROM WHICH APPEAL IS SOUGHT.

3. MANNER OF DISPOSITION (Jury Verdict — Non-Jury — Grant/Denial of Motion).

4. BRIEF STATEMENT OF POST-JUDGMENT MOTION.

Nature _____

Date Filed _____

Date and Summary of Contents of Order _____

5. IT IS EXPECTED THAT THE FOLLOWING ENUMERATIONS WILL BE PRESENTED ON APPEAL.

6. APPELLANT SEEKS THE FOLLOWING RELIEF ON APPEAL.

7. ATTACH COPY OF JUDGMENT TO THIS FORM AS WELL AS TO COPY OF THIS FORM SUBMITTED TO SETTLEMENT CONFERENCE CLERK.

8. I certify that this (appeal) (cross-appeal) is taken in good faith and not for the purpose of delay. The (appellant) (cross-appellant) (is) (is not) prepared immediately to take all steps to complete the appeal.

(Appellant is not ready to complete this appeal because _____

_____ .)

Date

Attorney for (Appellant) (Appellee)

(e) Discretionary Statement of Counsel.

In addition to the information provided in the Settlement Conference Information Form, each counsel may, in his or her discretion, file with the Settlement Conference Judge a separate statement indicating the position he or she will take in the settlement conference hearing regarding all demands and/or concessions that may be made. This statement shall not be revealed to opposing counsel without express authorization by the filing counsel.

(f) Settlement Conference Information Form Not a Part of Record on Appeal.

The Settlement Conference Information Form shall not become a part of the record. The Settlement Conference Information Form shall not be referred to in the briefs or oral arguments presented to the Court of Appeals by any party to the appeal and shall have no evidentiary value in any administrative or judicial proceeding. The parties to the appeal shall not be limited in their appeals before this Court to the positions adopted or facts stated in the Settlement Conference Information Form, except as ordered by the Settlement Conference Judge following a completed settlement conference hearing. The purpose of the Settlement Conference Information Form is to familiarize the Settlement Conference Judge and parties with the underlying cause of action by clarifying the parties' comprehension of the disputed issues or facts, thus insuring a more meaningful discussion of possible settlement or limitation of issues.

3. DUTIES OF SETTLEMENT CONFERENCE CLERK.

(a) Notification of Counsel.

It shall be the duty of the Settlement Conference Clerk to notify counsel for each party if a settlement conference has been accepted by both parties and a settlement conference is to be held.

(b) Assignment of Settlement Conference Number; Notification of Settlement Conference Judge.

As soon as notice is received by the Settlement Conference Clerk that a settlement conference is to be conducted, he or she shall affix a "Settlement Conference Number" to the case, and shall assign and notify a Settlement Conference Judge

and give notice to counsel of the name and location of the Settlement Conference Judge.

(c) **Additional Duties.**

The Settlement Conference Clerk under the supervision of the Settlement Conference Chief Judge will monitor the program, the timeliness of the procedures, coordination with the clerks of the trial courts, and work with and obtain status reports from the Settlement Conference Judges.

4. DUTIES OF CLERK OF TRIAL COURT.

(a) **When Settlement Conference Procedure is Rejected at Filing of Settlement Conference Information Form.**

If a settlement conference is rejected, the clerk of the trial court will proceed with the preparation of the record as required by law. Failure to timely file by either party shall be a rejection. The time for the preparation and transmittal of the record and transcript shall commence to run from the time of the filing of the first Settlement Conference Information Form which shows rejection of the conference or the failure to timely file, as aforesaid. The appeal shall then proceed as prescribed by and in accordance with appellate statutes and the rules of the Court of Appeals.

(b) **When Settlement Conference Procedure is Elected.**

(1) **Tolling of Time for Filing Record and Transcript.**

The election of the settlement conference procedure by both parties shall toll the running of the time period prescribed by statute for the preparation and transmittal of the record and transcript to the Court of Appeals until such time as the Settlement Conference Judge's order causes its resumption, as provided by Section 6 (a) (7) (ii).

(c) **When Settlement Conference Procedure is Begun, But Later Abandoned, Terminated or Issues Narrowed.**

If a settlement conference is elected but later abandoned or terminated prior to settlement of all disputed issues, an order so stating shall be filed with the clerk of the trial court (but this order is *not* made a part of the record on appeal), and the times for the preparation of the record and the processing of the appeal will start running as of the date of the filing of the

order with the said clerk of the trial court. The clerk shall thereupon proceed with the regular processing of the appeal in accordance with applicable statutes and the rules of the Court of Appeals. If the settlement conference procedure is accepted and the issues narrowed or transcript and record reduced by order of the Settlement Conference Judge, but complete settlement of all issues is not accomplished, a copy of an order so stating shall likewise be filed with the clerk of the trial court (and this order *shall* be made a part of the record on appeal), and the appellate times, procedure and process shall begin running as of the date of the filing of such order.

(d) When Settlement Conference Procedure Brings About Settlement.

The clerk of the trial court will do whatever is necessary to close the file and the case will not proceed to the Court of Appeals.

5. SETTLEMENT CONFERENCE CHIEF JUDGE.

The Court of Appeals shall appoint a Settlement Conference Chief Judge from among the State's Senior Superior Court and Senior Appellate Judges, whose duties will be to oversee the conduct of the program, the timeliness of the procedures, the work of the Settlement Conference Clerk and the Settlement Conference Judges. The Settlement Conference Chief Judge shall be compensated as provided by OCGA § 15-3-13 (c).

6. SETTLEMENT CONFERENCE JUDGES.

(a) Powers and Duties.

(1) Determination of Suitability for Procedure.

The Settlement Conference Judge, upon assignment of a case to him or her by the Settlement Conference Clerk, shall immediately review the Settlement Conference Information Form to determine if the case is one in which appeal is permitted to the Court of Appeals, if notice of appeal has been properly and timely filed in accordance with OCGA §§ 5-6-34 and 5-6-35 (g), and if the appeal is one subject to these procedures as provided by Section 1 (b) of this rule.

- (2) **Arranging Settlement Conference.**
If the Settlement Conference Judge concludes that the case is jurisdictionally appropriate, the Settlement Conference Judge shall promptly contact counsel for the parties and shall arrange a place for the conference, taking into consideration the convenience of the parties and the availability of the record documents at the conference site. The Settlement Conference Judge shall then designate the date, time and place of the conference and furnish this information to counsel and the Settlement Conference Clerk.
- (3) **Additional Powers of Settlement Conference Judge.**
Cases scheduled for settlement conference are fully subject to the authority of the Settlement Conference Judge and the Settlement Conference Judge has the authority to:
- (i) Order that the transcript preparation by the reporter at the trial court be stayed prior to the settlement conference hearing;
 - (ii) Order portions of the record and transcript forwarded to the office of the Settlement Conference Judge at a cost to be shared equally by the parties;
 - (iii) Recommend dismissal of the settlement conference procedure if the Settlement Conference Judge determines that the court lacks jurisdiction;
 - (iv) Dismiss the settlement conference for good cause;
 - (v) Issue, and file in the office of the clerk of the trial court, all orders effectuating agreements between the parties as to the modification of appellate deadlines in the trial court. Copies of all such interim agreements and orders issued by the Settlement Conference Judge shall be furnished to the Settlement Conference Clerk for information and clarification of the progress of cases in settlement procedure pending appeal;

- (vi) Issue, and file in the office of the clerk of the trial court, all orders effectuating agreements between the parties as to the settlement of any and all matters between the parties that may aid in the disposition of the appeal, including limitation of issues or facts; copies of such agreements and orders shall be filed with the Settlement Conference Clerk;
 - (vii) Exercise all authority pertinent to the settlement conference which is permitted to the judges of the superior courts and the appellate courts of this State;
 - (viii) Reschedule or recess conferences, keeping in mind the intent of these rules to facilitate settlements and simplify and expedite appeals;
 - (ix) Schedule multi-party conference calls in addition to meeting at the designated conference location.
- (4) Status Reports.
Monthly, the Settlement Conference Clerk shall ascertain from each Settlement Conference Judge the status of all pending settlement conference cases assigned to him or her.
- (5) Conference to be Conducted in Most Effective Manner.
The Settlement Conference Judge shall direct the conference in the manner that will most effectively lead to a full settlement by the parties, which may include separate ex parte, in camera conferences with counsel for the parties prior to a full hearing.
- (6) Resolution Within 60 Days of Assignment; Exceptions.
The Settlement Conference Judge shall at all times seek to expedite and resolve the matters and issues as promptly as practicable. Should final resolution not be made within 60 days from the assignment of a Settlement Conference Judge, at the discretion of the Settlement Conference Chief Judge, the settlement conference procedure may be terminated, or an order may be issued extending the procedure for good cause for additional

successive 30-day periods, a new order being required for each such 30-day extension.

(7) Disposition After Settlement Conference.

(i) Where Settlement Conference Fully Disposes of Appeal.

If the settlement conference fully disposes of the appeal, the Settlement Conference Judge will promptly issue an appropriate order to the trial court upon the authority of which the trial court shall enter judgment as indicated in the order and the appeal shall be dismissed. The Settlement Conference Judge shall dispatch a copy of the disposition order to the Settlement Conference Clerk, so that said Clerk's file may be closed and the appellate process terminated.

(ii) Where Settlement Conference Does Not Fully Dispose of Appeal.

If the settlement conference does not fully dispose of the appeal, the Settlement Conference Judge shall in the final disposition order eliminate, reduce, simplify or clarify the issues as to which settlement agreement can be reached. That order shall contain a statement of any partial settlements, stipulations or other agreements reached by the parties and shall be attached to the record. The order shall be binding on the parties unless otherwise ordered by the Court of Appeals.

The time provided by statute for the transmittal of the record and transcript from the clerk of the trial court to the Court of Appeals shall commence running from the date of receipt by the clerk of the trial court of the Settlement Conference Judge's order indicating the procedure has been completed or abandoned.

(iii) Costs.

Whenever the services of a Settlement Conference Judge are utilized, the Settlement Conference Judge, in his or her final order effecting disposition of the settlement hearing will provide

that an amount not to exceed \$200 per party be assessed as court costs to be remitted to the Settlement Conference Clerk within 30 days of the date of the order and be applied to the cost of the procedure.

Compensation.

The Settlement Conference Judge shall be compensated as provided by OCGA § 15-3-13 (c).

7. DUTIES OF ATTORNEYS PARTICIPATING.

Familiarity with Case.

Counsel for the parties shall familiarize themselves completely with all aspects of the facts and issues on appeal, including their authority to settle or compromise, prior to the conference, and shall be prepared to accomplish the intent of the conference.

Authority from Clients.

Attorneys are directed to endeavor to appear at the conference with authority from their clients to settle or compromise. Any client may be present at the conference by consent of attorneys for all parties. In matters where insurers and/or corporations are the ultimate parties, attorneys are directed to endeavor to have authority from such ultimate parties to effect a settlement or compromise.

Notwithstanding the above, it is understood that the final decision to settle or compromise may be held in abeyance pending final approval by the respective parties. Said matter, however, may only be held in abeyance for a reasonable period of time as established by the Settlement Conference Judge.

Final Decision Regarding Settlement.

The final decision to settle, compromise or reject a settlement conference procedure shall be obtained from and left to counsel who shall be presumed to act on the authority of the client. The Settlement Conference Judge may not override this decision. Settlements or compromises reached by the parties shall be signed by the attorneys. The Settlement Conference Judge will then issue an order giving effect to the agreements reached.

8. DOCKETING IN THE COURT OF APPEALS.

No appeal filed with the Court of Appeals and subject to his procedure as provided by Section 1 (b) shall be assigned a docket number unless the record shows that the procedure hereunder has been declined or used and abandoned or completed.

9. CONFIDENTIALITY.

All statements, representations, or offers of settlement made in a settlement conference or in preparation thereof, and not embodied in a settlement conference order, shall be privileged and shall remain confidential. This Section applies to all Settlement Conference Judges and staff participating in the settlement conference process. Judges of the Court of Appeals shall not have access to such settlement information disclosed in the settlement conference process except insofar as the final order of a Settlement Conference Judge eliminates or limits issues or otherwise simplifies the record in accordance with Section 6 (a) (7) (ii).

10. LIBERAL CONSTRUCTION OF RULE.

This rule is designed to promote the use of the settlement conference procedure and shall be liberally construed.

Adopted en Banc as revised through December 31, 1994.

**Chief Judge Marion T. Pope, Jr.
Presiding Judge William LeRoy McMurray, Jr.
Presiding Judge A. W. Birdsong, Jr.
Presiding Judge Dorothy Toth Beasley
Judge Gary B. Andrews
Judge Edward H. Johnson
Judge G. Alan Blackburn
Judge J.D. Smith
Judge John H. Ruffin, Jr.**

**William L. Martin, III
Clerk and Court Administrator**