

OFFICE OF STATE ADMINISTRATIVE HEARINGS

**NOTICE OF PROPOSED AMENDMENT TO ADMINISTRATIVE RULES OF
PROCEDURE**

CHAPTER 616-1-2

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that, pursuant to the authority set forth below, the Chief Judge of the Office of State Administrative Hearings (OSAH) is considering two proposed amendments to Chapter 616-1-2, entitled "Administrative Rules of Procedure." In the formulation of the proposed amendments, OSAH has considered the economic costs associated with the regulations and the impact on small businesses in the state and has proposed two amendments that, to the extent possible, will minimize excessive regulatory costs on parties appearing before OSAH.

The specific rules to be amended are Ga. Comp. R. & Regs. 616-1-2-.22, Hearing Procedure, and Ga. Comp. R. & Regs. 616-1-2-.34, Appearance by Attorneys; Signing of Pleadings.

Attached with this notice are copies of the rules, with underlined language indicating the proposed additions, as well as synopses of the proposed amendments to the rules.

This notice, together with an exact copy of the proposed amended rules and synopses, is being mailed to all persons who have requested in writing that they be placed on a mailing list. The notice, amended rules, and synopses may also be reviewed during normal business hours (Monday - Friday, 8:30 a.m. to 4:30 p.m.), excluding official state holidays, at OSAH's front desk, located at 230 Peachtree Street, N.W., Suite 850, Atlanta, Georgia 30303, or on OSAH's website, www.osah.ga.gov.

The intended date of adoption is May 5, 2014. The amendment will be considered for adoption on April 25, 2014, at 1 p.m., at OSAH's offices, courtroom 4. To ask questions or submit data, views, or arguments orally or in writing, please contact OSAH staff attorney Shoshana Elon at telephone number (404) 657-0660, fax number (404) 818-3760, or email address sselon@osah.ga.gov. Promulgation of rules and rule amendments is pursuant to O.C.G.A. §§ 50-13-4 and 50-13-40(c).

This 24th day of March, 2014.


MAXWELL WOOD
Chief State Administrative Law Judge

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616-1-2-.22 Hearing Procedure. Amended.

(1) The Administrative Law Judge shall conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. The Administrative Law Judge may, among other things:

(a) arrange for and issue notices of the date, time, and place of hearings and prehearing conferences;

(b) establish the methods and procedures to be used in the development of the evidence;

(c) hold prehearing conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(d) administer oaths and affirmations;

(e) regulate the course of the hearing and govern the conduct of the participants;

(f) examine witnesses called by the parties;

(g) rule on, admit, exclude, or limit evidence;

(h) establish the time for filing motions, testimony, and other written evidence, exhibits, briefs, proposed findings of fact and conclusions of law, and other submissions;

(i) rule on motions and procedural matters before the Administrative Law Judge, including but not limited to motions to dismiss for lack of jurisdiction or for summary determination;

(j) order that the hearing be conducted in stages whenever the number of parties is large or the issues are numerous and complex;

(k) allow cross-examination as required for a full and true disclosure of facts;

(l) order that any information so entitled under applicable state or federal statute or regulation be treated as confidential information and be accorded the degree of confidentiality required thereby;

(m) reprimand or exclude from the hearing any person for any indecorous or improper conduct;

(n) subpoena and examine witnesses or evidence the Administrative Law Judge believes necessary for a full and complete record; and

(o) take any action not inconsistent with this Chapter or the APA to maintain order at the hearing and ensure an expeditious, fair, and impartial hearing.

(2) When two or more parties have substantially similar interests and positions, the Administrative Law Judge may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to argue motions and objections on behalf of those parties. Attorneys may engage in cross-examination relevant to matters which the Administrative Law Judge finds have not been adequately covered by previous cross-examination.

(3) Whenever any party raises issues under either the Georgia or United States Constitution, the sections of any laws or rules constitutionally challenged and any constitutional provisions such laws or rules are alleged to violate must be stated with specificity. In addition, an allegation of unconstitutionality must be supported by a statement either of the basis for the claim of unconstitutionality as a matter of law or of the facts under which the party alleges that the law or rule is unconstitutional as applied to the party. Although the Administrative Law Judge is not authorized to resolve constitutional challenges to statutes or rules, the Administrative Law Judge may, in the Administrative Law Judge's discretion, take evidence and make findings of fact relating to such challenges.

(4) A hearing may be conducted by alternate means if the record reflects that all parties have consented and that the alternate means will not jeopardize the rights of a party to the hearing. In the Administrative Law Judge's discretion, a portion of a hearing may be conducted by remote telephonic communication, including but not limited to the use of two-way video-conferencing.

(5) Upon application by a party, the Administrative Law Judge shall certify the facts to the superior court of the county in which a party, agent, or employee of a party:

- (a) disobeys or resists any lawful order or process;
- (b) neglects to produce, after having been ordered to do so, any pertinent book, paper, or document;
- (c) refuses to appear after having been subpoenaed;
- (d) upon appearing, refuses to take the oath or affirmation as a witness;
- (e) after taking the oath or affirmation, refuses to testify; or
- (f) disobeys any other order issued by an Administrative Law Judge for a determination of the appropriate action, including a finding of contempt.

Authority O.C.G.A. Sec. 50-13-40.

616-1-2-.34 Appearance by Attorneys; Signing of Pleadings. Amended.

(1) Except as authorized in paragraph (2) of this Rule or where authorized by law, no person shall represent any party in a proceeding before an Administrative Law Judge unless the person is an active member in good standing of the State Bar of Georgia and has filed an entry of appearance in the case in the attorney's individual name. An entry of appearance shall not be required if a pleading, motion or other paper has previously been filed on the case by the attorney of record pursuant to paragraph (3) of this Rule.

(2) (a) Nonresident attorneys who are not active members of the State Bar of Georgia may be permitted to appear before an Administrative Law Judge in isolated cases upon motion to and in the discretion of the Administrative Law Judge. A motion to appear in a particular case shall state the jurisdiction in which the movant regularly practices and state that the movant agrees to behave in accordance with the Georgia standards of professional conduct and the duties imposed upon attorneys by O.C.G.A. § 15-19-4.

(b) In the Administrative Law Judge's discretion, an owner, majority shareholder, director, officer, registered agent, member, manager or partner of a corporation, limited liability company, or partnership may be allowed to represent the entity in a proceeding before an Administrative Law Judge.

(3) Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleadings and state the party's address. The signature of an attorney constitutes a certificate by the attorney that the attorney has read the pleading and that it is not interposed for any improper purpose, including, but not limited to, delay or harassment. If a pleading, motion, or other paper is signed in violation of this

Rule, the Administrative Law Judge, upon motion of any party or upon the Administrative Law Judge's own motion, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, including, but not limited to, dismissal.

Authority O.C.G.A. Sec. 50-13-40.

SYNOPSIS OF PROPOSED REVISIONS TO ADMINISTRATIVE RULES OF PROCEDURE, Chapter 616-1-2

(1) Rule 616-1-2-.22 Hearing Procedure

Purpose: To give administrative law judges discretion to permit the use of remote telephonic communication, including two-way video conferencing, for a portion of a hearing in appropriate cases. The amended rule will give judges additional flexibility in controlling the proceedings and will reduce costs to businesses.

Main feature: Adds a sentence to paragraph (4), granting discretion to an administrative law judge to conduct a hearing or a portion of a hearing by remote telephonic communication, including two-way video conferencing. By contrast, the current rule allows administrative law judges to conduct a hearing or a portion thereof by alternate means only if all parties have consented and the means will not jeopardize the rights of the party to the hearing.

(2) Rule 616-1-2-.34 Appearance by Attorneys; Signing of Pleadings

Purpose: To give administrative law judges discretion to permit specific laypersons to represent entities, thereby reducing costs to small businesses.

Main feature: Adds subparagraph (b) to give administrative law judges discretion in allowing persons with a significant relationship to an entity to represent the entity in a proceeding before OSAH. Under the current rule, only attorneys may represent parties before OSAH.