

**RULES
OF
OFFICE OF STATE ADMINISTRATIVE HEARINGS**

**CHAPTER 616-1-2
ADMINISTRATIVE RULES OF PROCEDURE**

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616-1-2-.01 Definitions. Amended.

As used in this Chapter, the term:

- (a) “Administrative Law Judge” means an administrative law judge or other person appointed by the Chief State Administrative Law Judge, and includes any other person appointed to preside over a hearing.
- (b) “APA” means the Georgia Administrative Procedure Act, O.C.G.A. Title 50, Chapter 13.
- (c) “Clerk” means the Chief Clerk.
- (d) “Contested Case” means a case initiated by a hearing request to a state agency by an aggrieved party.
- (e) “Covered Agency” means an agency required to refer contested cases to the Office of State Administrative Hearings.
- (f) “CPA” means the Civil Practice Act, O.C.G.A. Title 9, Chapter 11.
- (g) “Final Decision” means a decision entered by an Administrative Law Judge that is not reviewable by the Referring Agency.
- (h) “Initial Decision” means a decision entered by an Administrative Law Judge that is reviewable by the Referring Agency.
- (i) “Person” means any individual, agency, partnership, firm, corporation, association, or other entity.
- (j) “Referring Agency” means the state agency for which an administrative hearing is being held.
- (k) “State Legal Holidays” means those days on which state offices and facilities are closed by order of the Governor pursuant to O.C.G.A. § 1-4-1(a)–(b).

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “General” adopted as ER. 616-1-2-0.2-.01. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Definitions” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.02 Applicability and Scope of Rules.

- (1) This Chapter governs all contested cases referred to the Office of State Administrative Hearings.
- (2) At an Administrative Law Judge's discretion, procedural requirements of these Rules may be relaxed to facilitate the resolution of a matter without prejudice to the parties and in a manner consistent with the requirements of the APA or other applicable law.
- (3) Procedural questions that are not addressed by the APA, other applicable law, or these Rules shall be resolved at the Administrative Law Judge's discretion, as justice requires. The Administrative Law Judge may refer to the CPA and the Uniform Rules for the Superior Courts in the exercise of this discretion.
- (4) An Administrative Law Judge shall determine which law governs a hearing when a Rule conflicts with or is supplemented by a state or federal statute or rule.
- (5) Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Hearings for the Department of Agriculture" adopted as ER. 616-1-2-0.2-.02. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled "Applicability and Scope of These Rules" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.03 Referring Cases. Amended.

Unless otherwise provided by the Chief State Administrative Law Judge, all case referrals to the Office of State Administrative Hearings shall be made by a Referring Agency with an Office of State Administrative Hearings Form 1. (See Attachment A.) The Chief State Administrative Law Judge may prescribe different forms for different Referring Agencies or for different types or classes of cases. The Chief State Administrative Law Judge may authorize the referral of multiple cases through alternative methods.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Hearings for the Department of Banking and Finance” adopted as ER. 616-1-2-0.2-.03. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Request for OSAH to Conduct Hearings” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** Rule retitled “Referral of Cases to OSAH”. F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.04 Filing and Submitting Documents. Amended.

- (1) All case-related documents shall be filed on 8½ x 11-inch paper. A document is deemed filed on the date it is received by the Clerk, or on the official postmarked date on which the document was mailed, properly addressed with postage prepaid, whichever date comes first. The Clerk's office hours shall be 8:00 a.m. to 4:30 p.m., Monday through Friday, except State legal holidays. Documents may be filed by fax or by e-mail attachment.
- (2) Case-initiating documents shall be filed with the Clerk. Documents filed subsequent to case initiation shall be filed with the assigned Administrative Law Judge.
- (3) All documents shall be signed by the person, attorney, or other authorized agent or representative filing the documents, and shall include the name, address, telephone number, e-mail address, and representative capacity of the person filing the documents. By signing the document, the signer certifies that he or she has read the documents, and is not filing the documents for any improper purpose.
- (4) All legal authority referenced in any document and not already a part of the record shall be included in full and may not be incorporated by reference. This requirement does not apply to published decisions of the Georgia appellate courts, the Official Code of Georgia Annotated, Georgia laws, rules, and regulations published by the Secretary of State of Georgia, and all federal statutes, regulations, and published decisions.
- (5) Failure to comply with this Rule or any other requirement of this Chapter relating to the form or content of submissions to be filed may result in the noncomplying submission being excluded from consideration. If, on a party's motion or on the Administrative Law Judge's own motion, the Administrative Law Judge determines that a submission fails to meet any requirement of this Chapter, the Administrative Law Judge may direct the Clerk to return the submission by mail together with a reference to the applicable Rule(s). A party whose submission has been returned shall have ten (10) days from the date of the submission's return within which to conform the submission, and to re-file.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Hearings for the Georgia Bureau of Investigation" adopted as ER. 616-1-2-0.2-.04. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled "Filing and Submission of Document" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** ER. 616-1-2-0.3-.04 adopted. F. July 18, 1996; eff. July 19, 1996, to remain in effect until Aug. 4, 1996, as specified by the Agency. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.05 Computing Time. Amended.

- (1) Any period of time set forth in these Rules shall begin on the first day following the day of the act that initiates the time period. When the last day of the time period is a day on which the Clerk's office is closed, the time period shall run until the end of the next business day.
- (2) Whenever a party has a right or requirement to act or respond to service of notice or other document by another party within a period prescribed by these Rules and not otherwise specified by law, three (3) days shall be added to that prescribed period if the notice or document is served by first class mail.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Hearings for the Department of Children and Youth Services" adopted as ER. 616-1-2-0.2-.05. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled "Computation of Time" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.06 Changes of Time.

For good cause shown, an Administrative Law Judge, either on an Administrative Law Judge's own motion or on a party's motion, may change any time limit prescribed or allowed by these Rules that is not otherwise specified by law. The Administrative Law Judge shall notify all parties of any determination to change a time period.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Hearings for the Department of Community Affairs" adopted as ER. 616-1-2-0.2-.06. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled "Changes of Time" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.07 Burden of Proof. Amended.

- (1) The agency shall bear the burden of proof in all matters except that:
- a) in any case involving the imposition of civil penalties, an administrative enforcement order, or the revocation, suspension, amendment, or non-renewal of a license, the holder of the license and the person from whom civil penalties are sought or against whom an order is issued shall bear the burden as to any affirmative defenses raised;
 - b) a party challenging the issuance, revocation, suspension, amendment, or non-renewal of a license who is not the licensee shall bear the burden;
 - c) an applicant for a license that has been denied shall bear the burden;
 - d) any licensee that appeals the conditions, requirements, or restrictions placed on a license shall bear the burden; and
 - e) an applicant or recipient of a public assistance benefit shall bear the burden unless the case involves an agency action reducing, suspending, or terminating a benefit.
- (2) Prior to the commencement of the hearing, the Administrative Law Judge may determine that law or justice requires a different placement of the burden of proof.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Hearings for the Department of Consumer Affairs” adopted as ER. 616-1-2-0.2-.07. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Burdens of Persuasion and Going Forward” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** Rule retitled “Burden of Proof”. F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.08 Pleadings; Amendments to Pleadings. Amended.

A statute, rule, or order of an Administrative Law Judge may require a party to file a pleading. A party may amend a pleading without leave of the Administrative Law Judge until the tenth day prior to the date set for hearing on the matter, unless otherwise ordered by the Administrative Law Judge. Thereafter, a party may amend a pleading only by written consent of the opposing party or by leave of the Administrative Law Judge for good cause shown. If a party amends a pleading to which the opposing party is required to respond or reply, a response or reply to the amendment shall be filed within seven (7) days of service of the amendment unless otherwise ordered by the Administrative Law Judge.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Hearings for the Department of Education” adopted as ER. 616-1-2-0.2-.08. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Amendments to Pleadings” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.09 Notice of Hearing.

As soon as practicable after a case is referred to the Office of State Administrative Hearings, the Administrative Law Judge shall issue a Notice of Hearing for the purpose of setting forth the date, time, and place of the hearing. The Notice of Hearing shall be sent to the parties.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.09 entitled “Notice of Hearing” adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.10 Ex Parte Communications.

(1) Once a case has been referred to the Office of State Administrative Hearings, no person shall communicate with the assigned Administrative Law Judge relating to the merits of the case without the knowledge and consent of all other parties to the matter, provided that:

(a) an Administrative Law Judge may communicate with another Administrative Law Judge relating to the merits of cases at any time; or

(b) where circumstances require, ex parte communications are authorized for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits, provided that:

1. the Administrative Law Judge reasonably believes that no party will gain procedural or tactical advantage as a result of the ex parte communication; and
2. the Administrative Law Judge makes provision to promptly notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(2) Should an Administrative Law Judge receive a communication prohibited by this Rule, the Administrative Law Judge shall notify all parties of the receipt of such communication and its content.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended.** ER 616-1-2-0.2 repealed and R. 616-1-2-.10 entitled “Ex Parte Communications” adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.11 Service. Amended.

(1) A party filing a document or other submission with the Office of State Administrative Hearings shall simultaneously serve a copy of the document or submission on each party of record. Service shall be by first class mail, fax, e-mail, or personal delivery. Service by mail shall be complete upon mailing by first class mail, with proper postage attached.

(2) Service of a subpoena shall be made pursuant to Rule 19.

(3) Every filing shall be accompanied either by an acknowledgment of service from the person served, by his or her authorized agent for service, or by a certificate of service stating the date, place, and manner of service, as well as the name and address of the persons served.

(4) The Clerk shall maintain and, upon request, furnish to parties of record a list containing the name, address, and telephone number of each party's attorney, or each party's duly authorized representative.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.11 entitled "Service" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.12 Consolidation; Severance. Amended.

(1) In cases involving common issues of law or fact, an Administrative Law Judge may order a joint hearing to expedite or simplify consideration of any or all of the issues in such cases.

(2) If an Administrative Law Judge determines that it would be more conducive to an expeditious, full, and fair hearing for any party or issue to be heard separately, the Administrative Law Judge may sever the party or issue for a separate hearing.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.12 entitled “Consolidation and Severance” adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.13 Substitution of Parties; Intervention; Joinder. Amended.

(1) An Administrative Law Judge may, upon motion, permit the substitution of a party as justice requires.

(2)(a) A person seeking to intervene shall file a motion in accordance with Rule 16 stating the specific grounds for intervention and attach a pleading setting forth the claim or defense for intervention. The grant or denial of the motion to intervene shall be governed by the APA.

(b) To avoid undue delay or prejudice to the original parties, an Administrative Law Judge may limit the factual or legal issues that may be raised by an intervenor.

(3) An Administrative Law Judge is not authorized to join a party to any proceeding without the party's consent.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. Mar. 23, 1996, eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER as specified the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.13 entitled "Substitution of Parties; Intervention" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.14 Prehearing Conferences.

(1) An Administrative Law Judge may order the parties to appear at a specified time and place for one or more conferences before or during a hearing. At the discretion of the Administrative Law Judge, prehearing conferences may be conducted in whole or in part by telephone.

(2) The Administrative Law Judge may require a party to submit written proposals regarding:

(a) a schedule for prehearing procedures, including the submission and disposition of all prehearing motions;

(b) simplification, clarification, amplification, or limitation of the issues;

(c) evidentiary matters, such as:

1. identification of documents expected to be tendered by a party;
2. admissions and stipulations of facts and the genuineness and admissibility of documents;
3. identification of persons expected to be called as witnesses by a party and the substance of the anticipated testimony;
4. identification of expert witnesses expected to be called by a party to testify and the substance of the facts and opinions to which the expert witness is expected to testify and a summary of the grounds for each opinion; or
5. objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits or other submissions proposed by any party.

(d) matters for which official notice is sought; and

(e) other matters that may expedite hearing procedures or that the Administrative Law Judge otherwise deems appropriate.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. Mar. 23, 1995, eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER as specified by the Agency.

Amended: ER 616-1-2-0.2 repealed and R. 616-1-2-.14 entitled "Prehearing Conferences" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.15 Summary Determination. Amended.

(1) A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. There shall be included in the motion or attached thereto a short and concise statement of each of the material facts as to which the moving party contends there is no genuine issue for determination. Such a motion must be filed and served on all parties no later than thirty (30) days before the date set for hearing. For good cause shown, a motion may be filed at any time before the close of the hearing.

(2) A party may file and serve a response to a motion for summary determination or a counter-motion for summary determination within twenty (20) days of service of the motion for summary determination. The response shall include a short and concise statement of each of the material facts as to which the party opposing summary determination contends there exists a genuine issue for determination.

(3) When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

(4) Affidavits shall be made upon personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all documents to which reference is made in an affidavit shall be attached thereto and served therewith. Where facts necessary for summary determination are a matter of expert opinion, such facts may be resolved on the basis of uncontroverted affidavits or testimony of expert opinion.

(5) The Administrative Law Judge may set the motion for oral argument and call for the submission of proposed findings of fact, conclusions of law, and briefs. If the period required to rule upon the motion will extend beyond the date set for the hearing, the Administrative Law Judge may continue the hearing.

(6) The Administrative Law Judge shall rule on a motion for summary determination in writing.

(7) If all factual issues are decided by summary determination, the Administrative Law Judge shall issue an Initial or Final Decision.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Hearings for the Professional Practices Commission" adopted as ER. 616-1-2-0.2-.15. F. Mar. 23, 1995; eff. Apr.

1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Summary Determination” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.16 Motions. Amended.

(1) All requests made to the Administrative Law Judge shall be made by motion. Unless made during the hearing, motions shall be in writing, shall state specifically the grounds therefor, and shall describe the action or order sought. A copy of all written motions shall be served in accordance with Rule 11.

(2) A response to a motion may be filed within ten (10) days after service of the written motion. The time for response may be shortened or extended by the Administrative Law Judge for good cause prior to the expiration of the ten (10) day response period. Either party may request an expedited ruling.

(3) Unless otherwise provided, all motions shall be filed at least ten (10) days prior to the date set for hearing unless the need or opportunity for the motion could not reasonably have been foreseen. Such motions shall be filed as soon as the need or opportunity for the motion becomes reasonably foreseeable.

(4) All motions, and responses thereto, shall include citations of supporting authorities and, if germane, supporting affidavits or citations to evidentiary materials of record.

(5) The Administrative Law Judge may determine whether the nature and complexity of the motion justifies a hearing on the motion and notify the parties accordingly. A request for a hearing on a motion must be made in writing and filed by the date the response to the motion is due. Notice of a hearing on a motion shall be given by the Administrative Law Judge at least five (5) days prior to the date set for hearing. At the discretion of the Administrative Law Judge, a hearing on a motion may be conducted in whole or in part by telephone. The Administrative Law Judge shall rule upon motions promptly.

(6) Multiple motions may be consolidated for hearing or prehearing conference. The Administrative Law Judge may order the submission of briefs or oral argument relative to any motion.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Hearings for the Department of Public Safety” adopted as ER. 616-1-2-0.2-.16. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Motions” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.17 Withdrawal of Hearing Request; Settlement. Amended.

(1) A party requesting a hearing may withdraw the request for hearing at any time, in writing or otherwise, whereupon the Administrative Law Judge may enter an order of dismissal with prejudice.

(2) The parties may agree to settle the matters in dispute at any time, whereupon the Administrative Law Judge shall enter an order of dismissal with prejudice.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Hearings for the Real Estate Appraisers Board” adopted as ER. 616-1-2-0.2-.17. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Withdrawal of Request for Hearing or Settlement” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** Rule retitled “Withdrawal of Request for Hearing; Settlement”. F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.18 Evidence; Official Notice.

(1) As provided in the APA, the Administrative Law Judge shall apply the rules of evidence as applied in the trial of civil nonjury cases in the superior courts and may, when necessary to ascertain facts not reasonably susceptible of proof under such rules, consider evidence not otherwise admissible thereunder if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. At the discretion of the Administrative Law Judge, such evidence which may be admitted includes the following:

(a) records, reports, statements, plats, maps, charts, surveys, studies, analyses or data compilations, in any form, of public offices or agencies, setting forth (i) the activities of the office of agency, or (ii) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, or (iii) factual findings resulting from an investigation or research not performed in conjunction with the matter being heard and carried out pursuant to authority granted by law, unless its probative value cannot be determined or it lacks trustworthiness due to the sources of information or other circumstances;

(b) reports, records, statements, plats, maps, charts, surveys, studies, analyses or data compilations after testimony by an expert witness that the witness prepared such document and that it is correct to the best of the witness' knowledge, belief and expert opinion;

(c) to the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by official notice;

(d) any medical, psychiatric, or psychological evaluations or scientific or technical reports, records, statements, plats, maps, charts, surveys, studies, analyses or data compilations of a type routinely submitted to and relied upon by the Referring Agency in the normal course of its business; and

(e) documentary evidence in the form of copies if the original is not readily available, if its use would unduly disrupt the records of the possessor of the original, or by agreement of the parties. Upon request, parties shall have an opportunity to compare the copy with the original. Documentary evidence may also be received in the form of excerpts, charts, or summaries when, in the discretion of the Administrative Law Judge, the use of the entire document would unnecessarily add to the record's length. The entire document shall be made available for examination or copying, or both, by other parties at a reasonable time and place.

(2) Where practicable, a copy of each exhibit identified or tendered at the hearing shall be furnished to the Administrative Law Judge and the other parties when first presented at the hearing.

(3) The Administrative Law Judge shall give effect to statutory presumptions and the rules of privilege recognized by law.

(4) If scientific, technical, or other specialized knowledge may assist the Administrative Law Judge to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The expert may testify in terms of opinion or inference and give the reasons therefor without prior disclosure of the underlying facts or data, unless the Administrative Law Judge requires otherwise. In any event, the expert may be required to disclose the underlying facts or data on cross-examination.

(5) The Administrative Law Judge shall have the discretion to authorize or require the submission of direct testimony in written form. Unless otherwise ordered by the Judge, a party submitting such testimony in support of an issue on which it has the burden of proof shall file and serve the testimony upon all parties no less than fifteen (15) days before the hearing. All other such testimony shall be filed and served upon all parties no less than five (5) days before the hearing. The admissibility of the evidence contained in written testimony shall be subject to the same rules as if the testimony were produced under oral examination. The witness presenting the statement shall swear to or affirm the statement at the hearing and shall be subject to full cross-examination during the course of the hearing.

(6) Whenever any oral testimony sought to be admitted is excluded by the Administrative Law Judge, the proponent of the testimony may make an offer of proof by means of a brief statement on the record describing the excluded testimony. Whenever any documentary or physical evidence or written testimony sought to be admitted is excluded, it shall remain a part of the record as an offer of proof.

(7) All objections shall include a statement of the legal basis for the objection and shall be made promptly or deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(8) Official notice may, in the discretion of the Administrative Law Judge, be taken of

judicially recognizable facts. Any documents officially noticed shall be admitted into the record of the hearing. All parties shall be notified either prior to or during the hearing of the material noticed and any party shall on a timely request be afforded an opportunity to contest the matters of which official notice is taken.

(9) The Administrative Law Judge may take official notice of the contents of policy and procedure manuals promulgated by State agencies for which the Office of State Administrative Hearings conducts hearings. Unless such manuals have been adopted in accordance with the rulemaking procedures set out in O.C.G.A. § 50-13-4, the Administrative Law Judge shall cause the notice of hearing to identify such manuals by name and by publishing agency, to indicate that official notice will be taken of such manuals subject to the opportunity to contest such materials pursuant to paragraph (8) of this Rule; and to notify all parties where copies of the manuals may be inspected. Any party may introduce into evidence copies of particular portions of any manual officially noticed under this Rule upon which the party relies without further authentication. In addition, the Administrative Law Judge or any party may incorporate material from any manual so noticed in a brief, motion, pleading, order or decision by quotation or paraphrase thereof, by reference, or otherwise. Official notice may also be taken of any fact alleged, presented, or found in any other hearing before an Administrative Law Judge, or of the status and disposition of any such hearing; provided, that any party shall on timely request be afforded an opportunity to contest the matters of which official notice is taken.

(10) The weight to be given to any evidence shall be determined by the Administrative Law Judge based upon its reliability and probative value.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Hearings for the Real Estate Commission” adopted as ER. 616-1-2-0.2-.18. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Evidence; Official Notice” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.19 Subpoenas; Notices to Produce. Amended.

(1) Subpoenas may be issued which require the attendance and testimony of witnesses and the production of objects or documents at depositions or hearings provided for by these Rules. The party on whose behalf the subpoenas are issued shall be responsible for completing and serving the subpoenas sufficiently in advance of the hearing to secure the attendance of a witness or the deposed testimony of the witness at the time of the hearing.

(2) Subpoenas shall be in writing and filed at least five (5) days prior to the hearing or deposition at which a witness or document is sought, shall be served upon all parties, and shall identify the witnesses whose testimony is sought or the documents or objects sought to be produced. Every subpoena shall state the title of the action.

(3) Subpoenas may be obtained from the Office of State Administrative Hearings website or from the Clerk.

(4) A subpoena may be served at any place within Georgia and by any sheriff, by a sheriff's deputy, or by any other person not less than eighteen (18) years of age. Proof of service may be shown by certificate endorsed on a copy of the subpoena. Subpoenas may also be served by registered or certified mail, and the return receipt shall constitute prima facie proof of service. Service upon a party may be made by serving the party's counsel of record. Fees and mileage shall be paid to the recipient of a subpoena in accordance with O.C.G.A. § 24-10-24.

(5) Once issued, a subpoena may be quashed by the Administrative Law Judge if it appears that the subpoena is unreasonable or oppressive, or that the testimony, documents, or objects sought are irrelevant, immaterial, or cumulative and unnecessary to a party's preparation and presentation of its position at the hearing, or that basic fairness dictates that the subpoena should not be enforced. The Administrative Law Judge may require the party issuing the subpoena to advance the reasonable cost of producing the documents or objects.

(6) Once issued and served, unless otherwise conditioned or quashed, a subpoena shall remain in effect until the close of the hearing or until the witness is excused, whichever comes first.

(7) A party may serve a notice to produce in order to compel production of documents or objects in the possession, custody, or control of another party in lieu of serving a subpoena under this Rule. Service may be perfected in accordance with paragraph (4), but no fees or mileage shall be allowed therefor. Paragraph (5) shall apply to such notices.

(8) A notice to produce shall be in writing and shall be signed by the party or by the party's attorney seeking production of documents or objects. The notice shall be directed to the

opposing party or the opposing party's attorney. A copy of any notice to produce shall be filed with the Clerk.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Hearings for the Department of Revenue" adopted as ER. 616-1-2-0.2-.19. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled "Subpoenas" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** Rule retitled "Subpoenas and Notices to Produce". F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.20 Depositions; Written Direct Testimony. Amended.

(1) At any time during the course of a proceeding, the Administrative Law Judge may order that the testimony of a witness is to be taken by deposition or in response to written questions.

(2) The Administrative Law Judge may specify whether the scope of examination by deposition should be limited.

(3) Procedures for oral depositions to secure testimony shall be as follows:

(a) Examination and cross-examination of a deponent shall proceed under the same rules of evidence as are applicable to hearings under this Chapter. Each deponent shall be duly sworn by an officer authorized to administer oaths by the laws of the United States or the place where the examination is held, and the deponent's testimony shall be recorded and transcribed. Any objections made at the time of the deposition to the qualifications of the officer taking the deposition, to the manner in which the deposition was taken, to the evidence presented, to the conduct of any party, or to the proceedings shall be recorded and included in the transcript. Evidence to which there is an objection shall be taken subject to the objection.

(b) Any error or irregularity in the notice of taking testimony by deposition shall be deemed waived unless written objection thereto is filed with the Clerk and served upon all parties prior to the deposition in accordance with Rule 11. Any objection relating to the qualifications of the officer before whom the deposition is to be taken shall be deemed waived unless made before the deposition begins or as soon thereafter as the alleged lack of qualification becomes known or should have been discovered in the exercise of reasonable diligence.

(c) Any objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make an objection before or during the deposition unless the ground of the objection is one which might have been removed if presented at the time. Any error or irregularity occurring during the deposition in the administration of the oath or affirmation, the manner in which the deposition was taken, the form of questions or the answers thereto, the conduct of any party, or any error of a kind which might have been removed or cured if timely raised, shall be deemed waived unless reasonable objection thereto is made at the deposition.

(d) Any error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, certified, transmitted, filed, or otherwise dealt with by the officer taking the deposition shall be deemed waived unless a motion to strike all or a part of the deposition is made with reasonable promptness after such error or irregularity is or should have been ascertained in the exercise of reasonable diligence.

(e) The deposition shall be transcribed, certified, and filed with the Clerk. Any party who contends that the transcript does not truly or fully disclose what transpired at the deposition shall file a notice with the Clerk specifying alleged errors and omissions within ten (10) days of filing the deposition. If the parties are unable to agree as to the alleged errors and omissions, the Administrative Law Judge shall set the matter down for hearing with notice to all parties for the purpose of resolving the differences so as to make the record conform to the truth.

(f) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and attached to and filed with the deposition, and may be inspected and copied by a party. Copies may be substituted for originals if each party is given an opportunity to compare the proffered copy with the original to verify its correctness.

(4) Application to take testimony by written questions shall be made and considered in the same manner as prescribed for depositions in paragraphs (1), (2) and (3) of this Rule. If the Administrative Law Judge orders the taking of testimony on written questions, each written question shall be answered separately and fully in writing under oath, unless objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and any objections shall be signed by the attorney making them.

(5) Unless otherwise ordered by the Administrative Law Judge, a party submitting written direct testimony in support of an issue on which it has the burden of proof shall file and serve the written direct testimony upon all parties no less than fifteen (15) days before the hearing. All other testimony shall be filed and served upon all parties no less than five (5) days before the hearing. The admissibility of the evidence contained in written testimony shall be subject to the same rules as if the testimony were produced under oral examination. The witness presenting the statement shall swear to or affirm the statement at the hearing and shall be subject to full cross-examination.

(6) Subject to appropriate rulings on objections, a deposition or written direct testimony shall be received in evidence as if the testimony had been given by the witness before the Administrative Law Judge.

(7) Whenever used in this Rule, the word “witness” shall be construed to include parties.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Hearings for the Safety Fire Commissioner” adopted as ER. 616-1-2-0.2-.20. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Depositions and Written Questions to

Secure Testimony” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.21 Nature of Proceedings.

(1) In a hearing conducted under this Chapter, the Administrative Law Judge shall make an independent determination on the basis of the competent evidence presented at the hearing. Except as provided in Rule 29, the Administrative Law Judge may make any disposition of the matter available to the Referring Agency.

(2) If a party includes in its pleadings a challenge to the regularity of the process by which the Referring Agency reached a decision, the Administrative Law Judge shall take evidence and reach a determination on such a challenge at the outset of the hearing. The party making such a challenge shall have the burden of proof. If the Administrative Law Judge finds the challenge meritorious, the Administrative Law Judge may remand the matter to the Referring Agency.

(3) The hearing shall be de novo in nature, and the evidence on the issues in a hearing shall not be limited to the evidence presented to or considered by the Referring Agency prior to its decision.

(4) Unless otherwise provided by law, the standard of proof on all issues in a hearing shall be a preponderance of the evidence.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Hearings for the Secretary of State” adopted as ER. 616-1-2-0.2-.21. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Nature of Proceedings” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.22 Hearing Procedure.

(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, or a portion thereof, 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. **History.** Original Rule entitled “Hearings for the Department of Transportation” adopted as ER. 616-1-2-0.2-.22. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled “Hearing Procedure” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010. **Amended:** F. May 21, 2014; eff. June 10, 2014.

616-1-2-.23 Record of Hearings. Amended.

(1) All rulings, orders, and notices issued by the Administrative Law Judge, all pleadings and motions, all recordings or transcripts of oral hearings or arguments, all written direct testimony, all other data, studies, reports, documentation, information, and other written material of any kind submitted in the proceedings, a statement of matters officially noticed, all proposed findings of fact, conclusions of law, and briefs, as well as the Initial or Final Decision shall be a part of the hearing record and shall be available to the public, except as provided by law according confidentiality.

(2) Evidentiary hearings shall be either stenographically reported verbatim or recorded by electronic means. Upon written request, a copy of the record of any oral proceeding shall be furnished to any party at the requesting party's expense.

(3) All documentary and physical evidence shall be retained by the Clerk unless and until the record is transmitted to the Referring Agency pursuant to Rule 33.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Hearings for Agencies Which Have Contracted With OSAH" adopted as ER. 616-1-2-0.2-.23. F. Mar. 23, 1995; eff. Apr. 1, 1995, as specified by the Agency. **Amended:** Permanent Rule entitled "Record of Hearings" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.24 Proposed Findings of Fact and Conclusions of Law; Briefs. Amended.

At the conclusion of the hearing, the Administrative Law Judge may require a party to submit proposed findings of fact, conclusions of law, and briefs on a date certain. Reply briefs may be filed at the Administrative Law Judge's discretion.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Proposed Findings of Fact, Conclusions of Law and Briefs" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.25 Newly Discovered Evidence. Amended.

Prior to the entry of an Initial or Final Decision, a party may move the Administrative Law Judge for an order allowing the introduction of additional evidence on the basis that such evidence is newly discovered and was not discoverable in the exercise of reasonable diligence at the time of the hearing. If the Administrative Law Judge determines that the evidence is newly discovered, and that it may materially impact the case, the Administrative Law Judge shall hear and receive such evidence in the manner prescribed for the receipt of evidence by these Rules.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Newly Discovered Evidence” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.26 Closure of Hearing Record.

Except as provided in this Rule or otherwise ordered, the record shall be closed at the conclusion of the evidentiary hearing. Should the Administrative Law Judge request the preparation of a transcript or require or authorize the filing of proposed findings of fact and conclusions of law, or briefs, the record shall be deemed closed upon the receipt of the transcript or upon the expiration of the time allowed for the required or authorized filings, whichever date is later.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Closure of Hearing Record" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.27 Initial or Final Decision. Amended.

The Administrative Law Judge shall review and evaluate all of the admitted evidence and interlocutory rulings, and shall issue a written Initial or Final Decision, setting forth the findings of fact and conclusions of law. The Initial or Final Decision shall be issued within the time provided by law, or within thirty (30) days of the hearing record closing. Should the Administrative Law Judge determine that the complexity of the issues and the length of the record require additional time to issue the Initial or Final Decision, the Administrative Law Judge shall enter an order setting forth the earliest practicable date certain for the issuance of the Initial or Final Decision.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Initial Decision” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** Rule retitled “Initial or Final Decision”. F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.28 Motions for Reconsideration or Rehearing; Stay of Initial or Final Decision. Amended.

(1) A motion for reconsideration or rehearing will be considered only if filed within ten (10) days of the entry of the Initial or Final Decision. The time for filing such a motion may be extended by the Administrative Law Judge for good cause.

(2) The filing of such a motion shall not operate as a stay of enforcement of the Initial or Final Decision, unless the Administrative Law Judge finds that the public health, safety, and welfare will not be harmed by the issuance of a stay.

(3) The Administrative Law Judge shall not grant a motion for rehearing until after the expiration of the period for a response by any other party provided by Rule 16(2).

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Motions for Reconsideration or Rehearing; Stay of Initial Decision” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** Rule retitled “Motions for Reconsideration or Rehearing; Stay of Initial or Final Decision”. F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.29 Remands.

(1) The Administrative Law Judge may, either on the Administrative Law Judge's own motion or at the motion of any party, remand any matter to the Referring Agency at any time. In exercising discretion relating to the remand of a matter, the Administrative Law Judge shall consider, among other things, the possible delay created by a remand and its impact upon the parties, the likelihood that a remand could cause a change in the position taken by the Referring Agency whose activity is being reviewed, and the need for the peculiar expertise and experience of the Referring Agency in insuring a just and orderly administrative process.

(2) The Administrative Law Judge shall remand to the Referring Agency any matter contesting the denial of a permit or license in which the Administrative Law Judge concludes that the denial was unlawful and shall include in a written order of remand the findings of fact and conclusions of law required by Rule 27.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Remands" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.30 Default.

(1) A default order may be entered against a party that fails to participate in any stage of a proceeding, a party that fails to file any required pleading, or a party that fails to comply with an order issued by the Administrative Law Judge. Any default order shall specify the grounds for the order.

(2) Any default order may provide for a default as to all issues, a default as to specific issues, or other limitations, including limitations on the presentation of evidence and on the defaulting party's continued participation in the proceeding. After issuing a default order, the Administrative Law Judge shall proceed as necessary to resolve the case without the participation of the defaulting party, or with such limited participation as the Administrative Law Judge deems appropriate, and shall determine all issues in the proceeding, including those affecting the party in default.

(3) Within ten (10) days of the entry of a default order, the party against whom the default order was issued may file a written motion requesting that the order be vacated or modified, and stating the grounds for the motion.

(4) The Administrative Law Judge may decline to enter a default or may open a default previously entered if the party's failure was the result of providential cause or excusable neglect, or if the Administrative Law Judge determines from all of the facts that a proper case has been made to deny or open the default.

(5) If a party fails to attend an evidentiary hearing after having been given written notice, the Administrative Law Judge may proceed with the hearing in the absence of the party unless the absent party is the party who requested the hearing, in which case the Administrative Law Judge may dismiss the action. Failure of a party to appear at the time set for hearing shall constitute a failure to appear, unless excused for good cause.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled "Default" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.31 Emergency or Expedited Procedures. Amended.

Whenever a hearing is required by law to be held pursuant to an expedited time frame inconsistent with these Rules, or whenever the Administrative Law Judge determines that an expedited time frame is necessary to protect the interests of the parties or the public health, safety, or welfare, the Administrative Law Judge shall require such filing of pleadings and shall conduct the hearing in such manner as justice requires.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Emergency and Expedited Proceedings” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.32 Recusal of an Administrative Law Judge. Amended.

(1) An Administrative Law Judge may be recused, or disqualified, from a case based on bias, prejudice, interest, or any other cause provided for in this Rule.

(2) An Administrative Law Judge shall be recused in any proceeding in which the impartiality of the Administrative Law Judge might reasonably be questioned, including but not limited to instances in which:

(a) the Administrative Law Judge has a personal bias or prejudice concerning a party or a party's lawyer, or has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the Administrative Law Judge served as a lawyer in the matter in controversy, or a lawyer with whom the Administrative Law Judge previously practiced law served as a lawyer concerning the matter during such association, or the Administrative Law Judge has been a material witness concerning the matter; or

(c) the Administrative Law Judge, the spouse of the Administrative Law Judge, a person within the third degree of relationship to either of them, the spouse of such a person, or any other member of the family of the Administrative Law Judge residing in the household is a party to the proceeding or an officer, director, or trustee of a party, is acting as a lawyer or as a party's representative in the proceeding, is known by the Administrative Law Judge to have more than trivial interest that could be substantially affected by the proceeding, or is to the knowledge of the Administrative Law Judge likely to be a material witness in the proceeding.

(3) An Administrative Law Judge shall keep informed about his or her personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal financial interests of the spouse and minor children residing in the household of the Administrative Law Judge.

(4) An Administrative Law Judge who is recused by the terms of this Rule may disclose on the record the basis of disqualification and may ask the parties and their lawyers to consider, out of his or her presence, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties agree that the Administrative Law Judge should not be disqualified, the Administrative Law Judge may preside over the proceeding. The agreement shall be incorporated into the hearing record.

(5) Any party shall move for the disqualification of an Administrative Law Judge promptly after receipt of notice indicating that the Administrative Law Judge will preside or promptly

upon discovering facts establishing grounds for disqualification, whichever is later.

(6) All motions for recusal shall be made in writing and shall be accompanied by an affidavit setting forth definite and specific allegations that demonstrate the facts upon which the motion for disqualification is based. A motion for recusal shall be referred to another Administrative Law Judge if the Administrative Law Judge originally assigned to the matter determines that the affidavit is legally sufficient and that, assuming all the allegations of the affidavit are true, recusal would be warranted. If the motion for recusal is referred to another Administrative Law Judge and the motion is determined to be meritorious, the Administrative Law Judge originally assigned to the matter shall be disqualified.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Recusal of ALJ” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.33 Transfer of the Record to Referring Agency. Amended.

Following the entry of an Initial Decision, the Clerk shall compile and certify the record of the hearing, including the Initial Decision and any tapes or other recordings of the hearing which have not been transcribed, to the Referring Agency. Unless the record has been certified to a reviewing court pursuant to Rule 39, sixty (60) days following the entry of a Final Decision the Clerk shall compile and certify the record of the hearing, including the Final Decision and any tapes or other recordings of the hearing which have not been transcribed, to the Referring Agency.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Transfer of the Record to the Referring Agency” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

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. **History.** Original Rule entitled "Appearance by Attorneys; Signing of Pleadings" adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010. **Amended:** F. May 21, 2014; eff. June 10, 2014.

616-1-2-.35 Involuntary Dismissal.

After a party with the burden of proof has presented its evidence, any other party may move for dismissal on the ground that the party that presented its evidence has failed to carry its burden. The Administrative Law Judge may determine the facts and render an Initial or Final Decision against the party that has presented its evidence as to any or all issues. The moving party shall not waive its right to offer evidence in the event the motion is denied. The Administrative Law Judge may decline to render an Initial or Final Decision until after the close of all the evidence.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Involuntary Dismissal” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.36 Alternative Dispute Resolution.

The Office of State Administrative Hearings has established an Alternative Dispute Resolution process to provide a speedy, efficient, and inexpensive resolution of disputes. The Uniform Rules for Dispute Resolution Programs adopted by the Georgia Supreme Court that are applicable to contested civil actions shall be followed.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Alternative Dispute Resolution” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** Rule retitled “Alternative Dispute Resolution Program”. F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.37 Request for Agency Records.

(1) In any matter which could result in the revocation, suspension, or limitation of a license or permit, requests by the licensee or permit holder for exculpatory, favorable, or arguably favorable information relative to any pending issues concerning the license or permit shall be governed by O.C.G.A. § 50-13-18(d).

(2) Requests for access to public records pertaining to the subject of a pending matter shall be governed by O.C.G.A. § 50-18-70(e).

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Request for Agency Records” adopted. F. June 30, 1995; eff. July 20, 1995.

616-1-2-.38 Discovery.

Discovery shall not be available in any proceeding before an Administrative Law Judge except to the extent specifically authorized by law. Nothing in this Rule is intended to limit the provisions of Article 4 of Chapter 18 of Title 50 or Rule 37.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Discovery” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.39 Judicial Review. Amended.

Pursuant to the APA, a copy of any petition for judicial review of a Final Decision shall be filed with the Office of State Administrative Hearings by the party seeking judicial review simultaneously with the service of the petition upon the Referring Agency. The Referring Agency shall submit the hearing record as compiled and certified by the Clerk to the reviewing court.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Petitions for Judicial Review” adopted. F. June 30, 1995; eff. July 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.40 Civil Penalties Requested by the Department of Natural Resources. Amended.

(1) Whenever an official within the Department of Natural Resources (“DNR Official”) seeks the imposition of civil penalties, the DNR Official shall file a petition for hearing with the Clerk.

(2) A petition for hearing on civil penalties shall contain:

- (a) a statement of the legal authority and jurisdiction under which a hearing is requested;
- (b) a statement indicating each specific section, subsection, or paragraph, if applicable, of the laws or regulations allegedly violated;
- (c) a short and plain statement of the facts asserted as the basis of the alleged violation(s); and
- (d) the amount of civil penalty sought to be imposed.

(3) Upon filing the petition, the Clerk shall issue a summons directed to each person from whom civil penalties are sought and deliver the summons to the DNR Official for service. The summons shall be signed by the Clerk, and contain the name of the forum, the name and address of counsel for the DNR Official, and a statement of the requirements of paragraph (4) of this Rule. Each summons shall have a copy of the petition for hearing attached, and both shall be served by the DNR Official by certified mail or personal service. A return of service for each summons and petition shall be filed with the Clerk promptly after service.

(4) A response to the petition shall be filed with the Clerk and served upon the DNR Official within thirty (30) days of service of the summons and petition. The response shall address all factual allegations set forth in the petition and shall include any affirmative defenses. Any allegations of fact contained in the petition for hearing shall be deemed admitted unless they are specifically denied, or unless it is stated that there is a lack of knowledge or information sufficient to form a belief as to the truth of the allegations.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Petitions for Civil Penalties in Department of Natural Resources’ Matters” adopted. F. June 30, 1995; eff. July 20, 1995.

Amended: F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.41 Continuances; Conflicts. Amended.

(1)(a) A motion for continuance shall only be granted upon a showing of good cause, and shall not be granted simply because the parties or their counsel agree. The Administrative Law Judge may consider among other pertinent factors the impact of a continuance on any parties who do not consent to the motion, the calendar of Administrative Law Judge, the difficulty in rescheduling the hearing site, the need for an expeditious resolution of the matter(s) at issue, and the public health, safety, and welfare.

(b) A notice of conflict filed shall not be considered a motion for a continuance unless the notice expressly requests a continuance.

(2) In the event an attorney has a conflict involving an appearance before the Office of State Administrative Hearings and another legal proceeding, the requirements of the Uniform Rules for the Superior Courts shall be followed.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Continuances and Conflicts” adopted. F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.42 Attorney Withdrawals; Leaves of Absence. Amended.

Attorneys of record shall follow the Uniform Rules for the Superior Courts for withdrawals and leaves of absence.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Motions to Withdraw and Applications for Leaves of Absence” adopted. F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** Rule retitled “Withdrawals and Leaves of Absence”. F. Dec. 12, 2003; eff. Jan. 1, 2004. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.

616-1-2-.43 News Coverage of Hearings. Amended.

In all administrative hearings open to the public, persons desiring to broadcast, record, or photograph any portion of the hearing must file a timely written request with the Administrative Law Judge prior to the hearing. The request shall specify the particular hearing for which such coverage is requested, the type of equipment to be used in the courtroom, and the person responsible for installation and operation of such equipment. The Administrative Law Judge shall resolve such request in the manner prescribed for such a request by the Uniform Rules for the Superior Courts.

Authority O.C.G.A. Sec. 50-13-40. **History.** Original Rule entitled “Electronic and Photographic News Coverage of Administrative Proceedings” adopted. F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Nov. 15, 2010; eff. Dec. 5, 2010.