RULES
OF
OFFICE OF STATE ADMINISTRATIVE HEARINGS

CHAPTER 616-1-2
ADMINISTRATIVE RULES OF PROCEDURE

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616-1-2-.01 Definitions

All terms used in this Chapter shall be interpreted in accordance with the definitions set forth in the Georgia Administrative Procedure Act ("APA"), O.C.G.A. Title 50, Chapter 13 and as herein defined:

(1) "Administrative Court" or "Court" means either the Office of State Administrative Hearings, which is part of the executive branch of state government; or a Judge of the Office of State Administrative Hearings.

(2) "Agency" means any officer, department, division, bureau, board, commission, or entity in the executive branch of state government subject to the Administrative Court's jurisdiction.

(3) "Clerk" means the Chief Clerk or the Deputy Chief Clerk of the Court.

(4) "Contested Case" means a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined after an opportunity for hearing.

(5) "CPA" means the Civil Practice Act, O.C.G.A. Title 9, Chapter 11.

(6) "Judge" means the Chief Judge, Deputy Chief Judge, an Assistant Administrative Law Judge, or other person appointed by the Chief Judge to preside over a hearing.

(7) "License" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.

(8) "Person" means any individual, agency, partnership, firm, corporation, association, or other entity.

(9) "Referring Agency" means the state agency for which an administrative hearing is being held.

(10) "State 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(c). **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.02 Scope of Rules

(1) This Chapter governs all actions and proceedings before the Court.

(2) At the Court'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 Court's discretion, as justice requires. The Court may refer to the CPA and the Uniform Rules for the Superior Courts in the exercise of this discretion.

(4) The Court shall determine which law governs a hearing when a Rule conflicts with or is supplemented by a state or federal statute or rule.

Authority O.C.G.A. Secs. 50-13-40(c) and 50-13-41. **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. **Amended**: Rule retitled "Scope of Rules". F. June 22, 2020; eff. July 12, 2020.

616-1-2-.03 Commencing a Contested Case

(1) ***Agency Referrals.*** Except as provided in section (2) of this Rule, or unless otherwise provided by law, whenever an agency receives a request for a hearing in a contested case, the agency shall submit the hearing request to the Court within a reasonable period of time not to exceed thirty (30) calendar days after the agency's receipt of the request. The Chief Judge may prescribe the means by which referrals are accepted.

(2) ***Petition for Direct Appeal.***

(a) If an agency fails to forward a hearing request to the Court within thirty (30) calendar days after receipt of the request, or a shorter period prescribed by law, the party requesting the hearing may file a petition for a direct appeal with the Court.

(b) The petition for direct appeal must include:

1. The petitioner's name and mailing address;

2. The name of the agency that received the petitioner's hearing request;

3. The date the petitioner submitted the hearing request to the agency; and

4. A brief description of the adverse action that prompted the petitioner's hearing request.

(c) A copy of the petition for direct appeal shall be sent to the agency. Unless otherwise ordered, the agency shall have ten (10) business days after receipt of the petition to respond to the petition for direct appeal.

(d) The Court shall issue a written determination granting or denying the petition within a reasonable time. The granting or denial of the petition shall be within the Court's discretion. However, the Court's determination shall not be based on the merits of the contested case.

(e) If the Court grants the petition for direct appeal, the Court shall schedule the petitioner's case for a hearing. If the Court denies the petition, a hearing will not be scheduled.

Authority O.C.G.A. Secs. 50-13-40(c) and 50-13-41. **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. **Amended**: F. Feb. 8, 2019; eff. Feb. 28, 2019. **Amended**: Rule retitled "Commencing a Contested Case". F. June 22, 2020; eff. July 12, 2020.

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

(1) ***Preparation of Documents.***

(a) All documents filed with the Court shall be in 8 1/2" x 11" format.

(b) All documents filed with the Court shall be signed by the person, attorney, or other authorized agent or representative filing the documents. By signing the documents, the signer certifies that he or she has read the documents, and is not filing the documents for any improper purpose.

(c) All documents filed with the Court shall include the name, address, telephone number, email address (if available), and representative capacity of the person filing the documents. Attorneys shall comply with the additional requirements prescribed by Rule 34.

(2) ***Filing.***

(a) Case-initiating documents shall be filed with the Clerk. Documents filed subsequent to case initiation shall be filed with the assigned Judge's case management assistant.

(b) Documents may be filed in person or by mail or electronic means, including fax or email attachment.

(c) At the Court's discretion, nonconforming filings, including motions embedded in emails, may be treated as described in subsection (6) of this Rule.

(3) ***Office Hours.*** Office hours shall be 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding State Holidays.

(4) ***Filing Date.***

(a) ***In person.*** Documents submitted in person during office hours shall be deemed filed on the date they are received by the Court. Documents submitted outside of office hours shall be deemed filed on the date office hours recommence.

(b) ***Mail.*** Documents submitted by mail shall be deemed filed on the official postmarked date on which they were mailed, properly addressed, with postage prepaid.

(c) ***Electronic.*** Documents submitted by electronic means shall be deemed filed in accordance with the date stamp supplied by such means. If no date stamp is supplied, the document shall be deemed filed on the date it is received by the Court.

(5) ***Legal Authority.*** 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.

(6) ***Nonconforming Filings.*** 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. The Court, at its discretion, may return a nonconforming submission with a reference to the applicable Rule(s) and a deadline for resubmission.

Authority O.C.G.A. Sec. 50-13-13, 50-13-40, and 50-13-41. **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.05 Computing Time

(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 Court 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) calendar days shall be added to that prescribed period if the notice or document is served by first class mail.

(3) For good cause shown, the Court, either on its 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 Court shall notify all parties of any determination to change a time period.

Authority O.C.G.A. Sec. 50-13-40(c) and 50-13-41**. 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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.06 Repealed and Reserved.

Authority O.C.G.A. Sec. 50-13-40(c)**. 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. **Repealed**: F. June 22, 2020; eff. July 12, 2020.

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

(1) The agency shall bear the burden of proof in all matters except that:

(a) a party challenging the issuance, revocation, suspension, amendment, or non-renewal of a license who is not the licensee shall bear the burden;

(b) an applicant for a license that has been denied shall bear the burden;

(c) any licensee that appeals the conditions, requirements, or restrictions placed on a license shall bear the burden;

(d) an applicant for, or recipient of, a public assistance benefit shall bear the burden unless the case involves an agency action reducing, suspending, or terminating a benefit; and

(e) a party raising an affirmative defense shall bear the burden as to such affirmative defense.

(2) Prior to the commencement of the hearing, the Court may determine that law or justice requires a different placement of the burden of proof.

(3) The burden of proof does not shift based on which party presents its evidence first. Instead, the Court, at its discretion, may determine the order of presentation of evidence.

Authority O.C.G.A. Secs. 50-13-13, 50-13-40(c), and 50-13-41. **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

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

A statute, rule, or order of the Court may require a party to file a pleading. A party may amend a pleading without leave of the Court until the tenth calendar day prior to the date set for hearing on the matter, unless otherwise ordered by the Court. Thereafter, a party may amend a pleading only by written consent of the opposing party or by leave of the Court 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) calendar days of service of the amendment unless otherwise ordered by the Court.

Authority O.C.G.A. Secs. 50-13-13, 50-13-40(c), and 50-13-41. **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.09 Notice of Hearing

As soon as practicable after a case is commenced, the Court shall issue a Notice of Hearing to the parties for the purpose of setting forth the date, time, and location of the hearing.

Authority O.C.G.A. Secs. 50-13-13, 50-13-40(c), and 50-13-41. **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.10 Ex Parte Communications

(1) Once a case is before the Court, no person shall communicate with the assigned Judge relating to the merits of the case without the knowledge and consent of all other parties to the matter, provided that:

(a) the Judge may communicate with other Judges 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 Judge reasonably believes that no party will gain procedural or tactical advantage as a result of the ex parte communication; and

2. the 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 a Judge receive a communication prohibited by this Rule, he or she shall notify all parties of the receipt of such communication and its content.

Authority O.C.G.A. Secs. 50-13-40(c) and 50-13-41. **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.11 Service

(1) A party filing a document or other submission with the Court shall simultaneously serve a copy of the document or submission on each party of record or, if the party of record is represented, on the party's attorney or other person authorized by law to represent the party.

(2) Service shall be by first class mail, fax, email, or personal delivery. Service by first class mail shall be complete upon mailing, with proper postage attached.

(3) Every filing shall be accompanied by an acknowledgment of service for each person served; by an acknowledgment of service from the persons' authorized agents for service; or by a certificate of service stating the date, place, and manner of service, as well as the name and mailing address, fax number, and/or email address of the persons served.

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

(5) The Court 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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.12 Consolidation; Severance

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

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

Authority O.C.G.A. Secs. 50-13-13(a)(6) and 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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

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

(1) ***Substitution.*** The Court may, upon motion, permit the substitution of a party as justice requires.

(2) ***Intervention.***

(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 granting or denial of the motion to intervene shall be governed by the APA.

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

(3) ***Joinder.*** The Court is not authorized to join a person to any proceeding without that person's express consent.

Authority O.C.G.A. Secs. 50-13-13(a)(6), 50-13-14, and 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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.14 Conferences; Prehearing Proposals; Exchanging Exhibits and Witness Lists

(1) ***Conferences.*** The Court, at its discretion, may order the parties to appear at a specified time and place for one or more conferences before or during a hearing.

(a) Conferences may be held to consider the following:

1. a schedule for prehearing procedures, including the submission and disposition of all prehearing motions;

2. simplification, clarification, amplification, or limitation of the issues;

3. necessity or desirability of amendments to the pleadings;

4. evidentiary matters, such as:

(i) identification of documents expected to be tendered by a party;

(ii) admissions and stipulations of facts and the genuineness and admissibility of documents, which will avoid unnecessary proof;

(iii) identification of persons expected to be called as witnesses by a party and the substance of the anticipated testimony;

(iv) 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; and

(v) objections to the introduction of any written testimony, documents, papers, exhibits, or other submissions proposed by any party;

5. matters for which official notice is sought; and

6. other matters that may expedite hearing procedures or that the Court otherwise deems appropriate.

(b) The Court may issue an order reciting the action taken at the conference and the agreements made by the parties as to any of the matters considered. The order, when entered, shall control the subsequent course of the action, unless later modified.

(c) At the Court's discretion, conferences may be conducted in whole or in part by telephone or other remote communication method.

(2) ***Prehearing Proposals.*** The Court may require a party to submit written proposals regarding any of the matters listed in subsection (1)(a) of this Rule.

(3) ***Exchange of Exhibits and Witness Lists***.

(a) The Court, at its discretion, may order the parties to exchange exhibits and/or witness lists in advance of the hearing.

(b) Nothing in this Rule is intended to create a right to discovery or to limit the provisions of Article 4 of Chapter 18 of Title 50 or Rule 38.

Authority O.C.G.A. Secs. 50-13-13(a)(6) and 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. **Amended**: Rule retitled "Conferences; Prehearing Proposals; Exchanging Exhibits and Witness Lists". F. June 22, 2020; eff. July 12, 2020.

616-1-2-.15 Summary Determination

(1) ***Motion.*** 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 and the moving party is entitled to prevail as a matter of law.

(a) There shall be included in the motion or attached thereto a separate, concise, and numbered statement of each of the material facts as to which the moving party contends there is no genuine issue for determination. Each numbered material fact must be supported by a citation to evidence proving such fact. The Court will not consider any fact that

1. lacks citation to supporting evidence;

2. is stated as an issue or legal conclusion; or

3. is set out only in a brief and not in the moving party's statement of undisputed facts.

(b) A motion for summary determination must be filed and served on all parties no later than thirty (30) calendar 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) ***Response.*** A party may file and serve a response to a motion for summary determination or a counter-motion for summary determination within twenty (20) calendar days of service of the motion for summary determination.

(a) The response shall include a separate 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. These facts shall be individually numbered to correspond to the numbered statement of material facts provided by the moving party. Each fact must be supported by a citation to evidence. The Court will not consider any fact that

1. lacks citation to supporting evidence;

2. is stated as an issue or legal conclusion; or

3. is set out only in a brief and not in the responding party's statement of material facts.

(b) The Court may deem each of the moving party's facts as admitted unless the responding party

1. directly refutes the moving party's fact with a response supported by a citation to evidence, as required in subsection (2)(a) of this Rule;

2. states a valid objection to the admissibility of the moving party's fact;

3. asserts that the moving party's citation does not support the moving party's fact; or

4. asserts that the moving party's fact is not material or otherwise has failed to comply with this Rule.

(c) 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 as required in subsection (2)(a) of this Rule, that there is a genuine issue of material fact for determination and the moving party is entitled to prevail as a matter of law.

(3) ***Affidavits.*** 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.

(4) ***Oral Argument and Written Submissions.*** The Court may set the motion for oral argument and call for the submission of proposed findings of fact, conclusions of law, and briefs.

(5) ***Ruling.*** The Court shall rule on a motion for summary determination in writing.

(a) If the period required to rule upon the motion for summary determination will extend beyond the date set for the hearing, the Court may continue the hearing.

(b) The Court, at its discretion, may determine that the matter, as a whole, or certain specified issues, are better resolved by an evidentiary hearing and is inappropriate for summary determination.

Authority O.C.G.A. Secs. 50-13-13(a)(6) and 50-13-40(c)**.** **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.16 Motions

(1) All requests made to the Court shall be made by motion.

(a) Unless made during the hearing, motions shall be in writing, shall state specifically the grounds therefor, and shall describe the action or order sought.

(b) A copy of all written motions shall be served in accordance with Rule 11.

(c) Unless otherwise provided, all motions shall be filed at least ten (10) calendar 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.

(2) Except as provided in subsection (1)(c) of Rule 41, a response to a motion may be filed within ten (10) calendar days after service of the written motion. The time for response may be shortened or extended by the Court for good cause prior to the expiration of the response period.

(3) Either party may request an expedited ruling on a motion.

(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 Court, at its discretion or at the request of a party, may hold a hearing on any motion.

(a) 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.

(b) The Court shall give notice of a hearing on a motion at least five (5) business days prior to the date set for hearing.

(c) At the Court's discretion, a hearing on a motion may be conducted in whole or in part by telephone or other remote communication method.

(6) The Court may order the submission of briefs or oral argument relative to any motion.

(7) Multiple motions may be consolidated for hearing or prehearing conference.

Authority O.C.G.A. Secs. 50-13-13(a)(6) and 50-13-40(c). **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

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

(1) ***Withdrawal of Hearing Request.*** A party requesting a hearing may withdraw the request for hearing at any time, in writing or otherwise, whereupon the Court shall enter an order of dismissal either with prejudice or without prejudice.

(2) ***Settlement.*** The parties may agree to settle the matters in dispute at any time, whereupon the Court, upon receiving notification of such settlement, shall enter an order of dismissal with prejudice.

Authority O.C.G.A. Secs. 50-13-13(a)(4), (6) and 50-13-40(c)**. 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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.18 Rules of Evidence; Official Notice; Weight of Evidence

(1) ***Rules of Evidence.***

(a) The Court 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 or if it consists of reports of medical, psychiatric, or psychological evaluations routinely submitted to, and relied upon by an agency in the normal course of its business. However, a party's failure to call an available witness to testify does not render such witness' testimony "not reasonably susceptible of proof."

(b) Where practicable, a copy of each exhibit identified or tendered at the hearing shall be furnished to the Court and the other parties when first presented at the hearing unless otherwise directed by the Court.

(c) The Court shall give effect to statutory presumptions and the rules of privilege recognized by law.

(d) If scientific, technical, or other specialized knowledge may assist the Court 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 Court requires otherwise. In any event, the expert may be required to disclose the underlying facts or data on cross-examination.

(e) Whenever any oral testimony sought to be admitted is excluded by the Court, 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.

(f) 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.

(2) ***Official Notice.*** The Court may, at its discretion, take official notice of judicially recognizable facts. All parties shall be notified either prior to or during the hearing of the facts noticed, and any party shall, on a timely request, be afforded an opportunity to contest the matters of which official notice is taken.

(a) Any documents officially noticed shall be admitted into the record of the hearing.

(b) The Court may take official notice of the contents of policy and procedure manuals promulgated by agencies for which the Court conducts hearings.

1. Unless such manuals have been adopted in accordance with the rulemaking procedures set out in O.C.G.A. § 50-13-4, the Court 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; 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 provision without further authentication.

2. In addition, the Court or any party may incorporate material from any manual noticed pursuant to subsection (b) of this Rule in a brief, motion, pleading, order, or decision by quotation or paraphrase thereof, by reference, or otherwise.

(c) The Court may take official notice of the contents of policy and procedure manuals promulgated by federal agencies, which directly relate to the cases adjudicated by this Court; provided, that all parties are notified either prior to or during the hearing of the federal policies and procedures noticed, and any party shall, on timely request, be afforded an opportunity to contest the policies or procedures of which official notice is taken.

(d) The Court may take official notice of any fact alleged, presented, or found in any other hearing before any Judge of the Court, 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.

(3) ***Weight of Evidence.*** The weight to be given to any evidence shall be determined by the Court based upon its reliability and probative value.

Authority O.C.G.A. Secs. 50-13-15 and 50-13-40(c). **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. **Amended**: Rule retitled "Rules of Evidence; Official Notice; Weight of Evidence". F. June 22, 2020; eff. July 12, 2020.

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

(1) ***Subpoenas.*** 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.

(a) 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, the deposed testimony of the witness, or the production of objects or documents at the time of the hearing.

(b) Subpoena forms may be obtained from the Court's website. Every subpoena must:

1. be in writing and state the title of the action;

2. be filed with the Court at least five (5) calendar days prior to the hearing or deposition at which a witness or document is sought;

3. be served on all parties; and

4. identify the witnesses whose testimony is sought or the documents or objects sought to be produced.

(c) Service of subpoenas shall be completed as follows:

1. A subpoena may be served at any place within Georgia and by any sheriff, sheriff's deputy, or any other person not younger than eighteen (18) years of age. Proof of service may be shown by certificate endorsed on a copy of the subpoena.

2. Subpoenas may also be served by registered or certified mail, and the return receipt shall constitute prima facie proof of service.

3. Service of a subpoena directed to a party may be made by serving the party's counsel of record.

(d) Fees and mileage shall be paid to the recipient of a subpoena in accordance with O.C.G.A. § 24-13-25.

(e) Once issued, a subpoena may be quashed by the Court if it appears that

1. the subpoena is unreasonable or oppressive;

2. the testimony, documents, or objects sought are irrelevant, immaterial, or cumulative;

3. the subpoena is unnecessary to a party's preparation and presentation of its position at the hearing; or

4. basic fairness dictates that the subpoena should not be enforced.

(f) The Court may require the party issuing the subpoena to advance the reasonable cost of producing the documents or objects.

(g) The Court shall have the power to enforce subpoenas through the imposition of civil penalties, pursuant to Rule 44.

(h) 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.

(2) ***Notices to Produce.*** 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.

(a) A notice to produce shall be:

1. in writing;

2. signed by the party seeking production of documents or objects, or by the party's attorney or representative if the party is represented;

3. directed to the opposing party or the opposing party's attorney;

4. served on all parties; and

5. filed with the Court.

(b) Service may be perfected in accordance with paragraph (1)(c) of this Rule, but no fees or mileage shall be allowed therefor.

(c) Paragraph (1)(e) of this Rule shall apply to notices to produce.

Authority O.C.G.A. Secs. 50-13-13(a)(7), (b); 50-13-40(c); and 50-13-41(a)(2)-(3). **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. **Amended**: F. Feb. 8, 2019; eff. Feb. 28, 2019. **Amended**: F. June 22, 2020; eff. July 12, 2020.

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

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

(a) 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 Court. Whenever used in this Rule, the word "witness" shall be construed to include parties.

(2) ***Depositions.***

(a) The Court may specify whether the scope of examination by deposition should be limited.

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

1. Examination and cross-examination of a deponent shall proceed under the same rules of evidence as are applicable to hearings under this Chapter.

2. 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.

3. Objections.

(i) 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.

(ii) Any error or irregularity in the notice of taking testimony by deposition shall be deemed waived unless written objection thereto is filed with the Court and served upon all parties prior to the deposition in accordance with Rule 11.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

4. The deposition shall be transcribed, certified, and filed with the Court. Any party who contends that the transcript does not truly or fully disclose what transpired at the deposition shall file a notice with the Court specifying alleged errors and omissions within ten (10) calendar days of filing the deposition. If the parties are unable to agree as to the alleged errors and omissions, the Court 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.

5. Documents and objects 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.

(3) ***Written Direct Testimony.***

(a) The Court shall have the discretion to authorize or require the submission of direct testimony in written form.

(b) Application to take testimony by written questions shall be made and considered in the same manner as prescribed for depositions in subsection (2) of this Rule.

(c) If the Court 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 person making them.

(d) Unless otherwise ordered by the Court, 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) calendar days before the hearing. All other testimony shall be filed and served upon all parties no less than five (5) business days before the hearing.

(e) 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.

Authority O.C.G.A. Secs. 50-13-13(a)(6) and 50-13-40(c). **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.21 Nature of Proceedings

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

(2) If a party includes in its pleadings a challenge to the regularity of the process by which the agency reached a decision, the Court 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 Court finds the challenge meritorious, it may remand the matter to the 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 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. Secs. 50-13-13(a)(2)-(3), 50-13-40(c), and 50-13-41(b). **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.22 Hearing Procedure

(1) The Court shall conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. The Court 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 Court, 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 Court believes necessary for a full and complete record;

(o) impose civil penalties in accordance with Rule 44; or

(p) 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 Court may limit the number of attorneys or other party representatives who will be permitted to cross-examine witnesses and argue motions and objections on behalf of those parties.

Attorneys may engage in cross-examination relevant to matters which the Court finds have not been adequately covered by previous cross-examination.

(3) Whenever any party raises issues under either the Georgia Constitution 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 Court is not authorized to resolve constitutional challenges to statutes or rules, the Court may, at its 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 Court'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) If any person commits any of the following actions, the Court may certify the facts to the superior court of the county where the offense occurred, for a determination of the appropriate action, including a finding of contempt:

(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 the Court.

Authority O.C.G.A. Secs. 50-13-13(a)(1), (a)(6), (b); 50-13-15(1)-(3), (5); 50-13-40(c); 50-13-41(a)(2)-(3). **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.23 Record of Hearings

(1) The following shall be a part of the hearing record and shall be available to the public, except as provided by law according confidentiality:

(a) all rulings, orders, and notices issued by the Court;

(b) all pleadings and motions;

(c) all recordings or transcripts of oral hearings or arguments;

(d) all written direct testimony;

(e) all other data, studies, reports, documentation, information, other written material of any kind, and physical evidence submitted in the proceedings;

(f) a statement of matters officially noticed;

(g) all proposed findings of fact, conclusions of law, and briefs; and

(h) the Decision issued in the matter.

(2) Evidentiary hearings either shall have their audio recorded by electronic means or be stenographically reported verbatim. 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 Court unless transmitted to the agency pursuant to Rule 33.

Authority O.C.G.A. Secs. 50-13-13(a)(8) and 50-13-40(c). **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

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

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

Authority O.C.G.A. Secs. 50-13-13(a)(6) and 50-13-40(c)**. 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. **Amended**: Rule retitled "Proposed Findings of Fact, Conclusions of Law, and Briefs". F. June 22, 2020; eff. July 12, 2020.

616-1-2-.25 Newly Discovered Evidence

After the close of the hearing record, but prior to the entry of a Decision, a party may move 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 Court determines that the evidence is newly discovered, and that it may materially impact the case, the Court shall hear and receive such evidence in the manner prescribed for the receipt of evidence by these Rules.

Authority O.C.G.A. Secs. 50-13-13(a)(6) and 50-13-40(c). **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

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 Court request or authorize 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. Secs. 50-13-13(a)(6) and 50-13-40(c). **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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.27 Decisions

(1) The Court shall review and evaluate all of the admitted evidence and interlocutory rulings, and shall issue a written Decision, setting forth the findings of fact and conclusions of law.

(2) The Decision shall be issued within the time provided by law, or within thirty (30) days of the hearing record closing. Should the Court determine that the complexity of the issues and the length of the record require additional time to issue the Decision, the Court shall enter an order setting forth the earliest practicable date certain for the issuance of the Decision.

(3) Every Decision entered by the Court that is not reviewable by a Reviewing Agency shall be a Final Decision.

(4) Every Decision entered by the Court that is reviewable by a Reviewing Agency shall be an Initial Decision.

(5) "Reviewing Agency" means the ultimate decision maker in a contested case that is a constitutional board or commission; an elected constitutional officer in the executive branch of this state; any professional licensing board, as that term is defined in O.C.G.A. § 43-1-1(3), if the members thereof are appointed by the Governor; or the Department of Human Services in a contested case where such department is required to be the ultimate decision maker by federal law or regulations governing titles IV-B and IV-E of the federal Social Security Act.

Authority O.C.G.A. Sec. 50-13-13(a)(6), 50-13-40(c), and (50-13-41(d). **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. **Amended**: Rule retitled "Decisions". F. June 22, 2020; eff. July 12, 2020.

616-1-2-.28 Motions for Reconsideration or Rehearing

(1) A motion for reconsideration or rehearing will be considered only if filed within ten (10) calendar days of the entry of the Decision. However, the time for filing such a motion may be extended by the Court for good cause.

(2) The filing of a motion for reconsideration or rehearing shall not operate as a stay of enforcement of the Decision, unless the Court finds that the public health, safety, and welfare will not be harmed by the issuance of a stay.

(3) When filing a motion for reconsideration or rehearing, the movant must set forth facts or law establishing why the Court should reverse its prior decision. A movant should avoid simply restating previous arguments already presented to the Court.

(4) In determining whether to grant a motion for reconsideration or rehearing, the Court shall consider

(a) whether the movant has set forth facts or law showing the discovery of new evidence;

(b) an intervening development or change in the controlling law; or

(c) the need to correct a clear error or prevent a manifest injustice.

(5) The Court shall not grant a motion for reconsideration or 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. **Amended**: Rule retitled "Motions for Reconsideration or Rehearing". F. June 22, 2020; eff. July 12, 2020.

616-1-2-.29 Remands

(1) The Court, at its discretion or upon motion of a party, may remand any pending case to the agency.

(2) In exercising discretion relating to the remand of a pending case, the Court shall consider

(a) the possible delay created by a remand and its impact upon the parties;

(b) the likelihood that a remand could cause a change in the position taken by the agency whose action is being reviewed; and

(c) the need for the peculiar expertise and experience of the agency in ensuring a just and orderly administrative process.

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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.30 Default

(1) A default order may be entered against a party who:

(a) fails to appear at the scheduled hearing time after proper notice was duly issued;

(b) fails to participate in any stage of a proceeding;

(c) fails to file any required pleading; or

(d) fails to comply with an order issued by the Court.

The default judgment shall specify the grounds for the default.

(2) A default judgment 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.

(3) After issuing a default judgment, the Court shall proceed as necessary to resolve the case without the participation of the defaulting party, or with such limited participation as the Court deems appropriate, and shall determine all issues in the proceeding, including those affecting the party in default. If the default judgment is based on a failure to appear by the party who requested the hearing, the Court may dismiss the pending case.

(4) Within ten (10) calendar days of the entry of a default judgment, the party against whom the default judgment was issued may file a written motion requesting that the judgment be vacated or modified, and stating the grounds for the motion. The Court may accept an untimely motion if a party includes facts establishing good cause for the delay in filing.

(5) The Court 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 Court determines from all of the facts that a proper case has been made to deny or open the default.

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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

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

Whenever a hearing is required by law to be held pursuant to an expedited time frame inconsistent with these Rules, or whenever the Court determines that an expedited time frame is necessary to protect the interests of the parties or the public health, safety, or welfare, the Court may 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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.32 Recusal

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

(2) A Judge shall be recused in any proceeding in which his or her impartiality might reasonably be questioned, including but not limited to instances in which

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

(b) the Judge served as a lawyer in the case;

(c) a lawyer with whom the Judge previously practiced law served as a lawyer in the case during such association;

(d) the Judge was a material witness in the case; or

(e) the Judge, the Judge's spouse, a person within the third degree of relationship to either of them, the spouse of such a person, or any other member of the Judge's family residing in the Judge's household

1. is a party to the proceeding;

2. is an officer, director, or trustee of a party;

3. is acting as a lawyer or as a party's representative in the proceeding;

4. is known by the Judge to have more than a trivial interest that could be substantially affected by the proceeding; or

5. is to the knowledge of the Judge likely to be a material witness in the proceeding.

(3) A 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 Judge's spouse and minor children residing in the Judge's household.

(4) A 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 Judge should not be disqualified, the Judge may preside over the proceeding. The parties' agreement to waive disqualification shall be incorporated into the hearing record.

(5) A party shall move for the disqualification of a Judge promptly upon discovering facts establishing grounds for disqualification.

(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.

(7) A motion for recusal shall be referred to another Judge if the 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.

(8) If the motion for recusal is referred to another Judge and the motion is determined to be meritorious, the Judge originally assigned to the matter shall be disqualified from presiding over the pending case.

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. **Amended**: Rule retitled "Recusal". F. June 22, 2020; eff. July 12, 2020.

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

Following the entry of an Initial Decision, as defined in Rule 27, 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, as defined in Rule 27, 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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.34 Attorneys

(1) ***Bar Membership.*** Except as authorized in paragraphs (3) and (4) of this Rule, or where authorized by law, no person shall represent any party in a proceeding before the Court unless the person is an active member in good standing of the State Bar of Georgia.

(2) ***Entry of Appearance.*** No attorney shall represent a party before the Court until he or she has filed an entry of appearance or a signed pleading or motion in the case that includes:

(a) the style and number of the case;

(b) the identity of the party for whom the appearance is made; and

(c) the name, assigned state bar number, current office address, telephone number, and email address of the attorney.

(3) ***Nonresident Attorneys.*** Nonresident attorneys who are not active members of the State Bar of Georgia may be permitted to appear before the Court in isolated cases upon motion and in the discretion of the Court. 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.

(4) ***Representation of Business Organizations.*** In the Court's discretion, an owner, majority shareholder, director, officer, registered agent, manager, or partner of a corporation, limited liability company, or partnership may be allowed to represent the entity in a proceeding before the Court.

(5) ***Appointment of Counsel.*** Except as provided by law, the Court is not authorized to appoint attorneys to represent a party.

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. **Amended**: Rule retitled "Attorneys". F. June 22, 2020; eff. July 12, 2020.

616-1-2-.35 Involuntary Dismissal.

(1) 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. A party's decision to move for dismissal shall not constitute a waiver of the party's right to offer evidence in the event the motion is denied.

(2) Upon a party making such a motion, the Court may determine the facts and render a Decision against the party that has presented its evidence as to any or all issues or the Court may decline to render a 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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.36 Mediation

(1) The Court has established a mediation process to provide a speedy and efficient 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.

(2) Any party may file a written request for mediation with the Court.

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. **Amended**: Rule retitled "Mediation". F. June 22, 2020; eff. July 12, 2020.

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

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

(2) Release of child abuse records shall be governed by O.C.G.A. §§ 49-5-40 through -46.

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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.38 Discovery

Discovery shall not be permitted except as authorized by law.

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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.39 Judicial Review

Pursuant to the APA, a copy of any petition for judicial review of a Final Decision, as defined in Rule 27, shall be filed with the Court 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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

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

(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 with the Clerk, which shall contain:

(a) a statement of the legal authority and jurisdiction under which the contested case is commenced;

(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.

(2) The petition shall be accompanied by a summons directed to each person from whom civil penalties are sought, which shall contain the name of the Court, the name and address of counsel for the DNR Official, and a summary of the requirements of paragraph (4) of this Rule.

(3) Upon the filing of the petition and summons, the Clerk shall sign and deliver the summons to the DNR Official for service. Each summons shall have a copy of the petition attached, and the DNR Official shall serve the summons and petition 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 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. **Amended**: Rule retitled "Civil Penalties Requested by the Department of Natural Resources". F. June 22, 2020; eff. July 12, 2020.

616-1-2-.41 Continuances; Conflicts

(1) ***Continuances.*** A motion for continuance shall only be granted upon a showing of good cause or where required by law, and shall not be granted simply because the parties or their counsel agree.

(a) In determining whether to grant a motion for continuance, the Court may consider, among other pertinent factors,

1. the impact of a continuance on any parties who do not consent to the motion;

2. the Court's calendar;

3. the difficulty in rescheduling the hearing site;

4. the need for an expeditious resolution of the matter(s) at issue; and

5. the public health, safety, and welfare.

(b) A notice of conflict shall not be considered a motion for a continuance.

(c) In the event a motion for continuance is filed within ten (10) calendar days of a scheduled hearing, the Court may continue the hearing without the necessity of allowing time for a response if the opposing party has been served with a copy of the motion for continuance and the party seeking a continuance has set forth facts that constitute good cause for a continuance.

(2) ***Conflicts.***

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

(b) If the party filing the notice of conflict also seeks a continuance of the pending case, a separate motion for continuance shall accompany the notice of conflict.

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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

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

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

Media Entities shall follow the Uniform Rules for the Superior Courts to request permission for media coverage of a contested case open to the public.

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. **Amended**: F. June 22, 2020; eff. July 12, 2020.

616-1-2-.44 Powers of Administrative Law Judge

(1) The Court shall have all the powers of the ultimate decision maker in the agency with respect to a contested case and the power to do all things specified in paragraph (6) of subsection (a) of Code Section 50-13-13.

(2) The Court shall have the power to impose civil penalties for

(a) failing to obey any lawful process or order of the Court or any rule or regulation promulgated by the Court;

(b) failing to comply with subpoenas;

(c) any indecorous or improper conduct committed in the presence of the Judge; or

(d) submitting pleadings or papers for an improper purpose or containing frivolous arguments or arguments that have no evidentiary support.

(3) The Court may impose a civil penalty of not less than $100.00 nor more than $1,000.00 per violation. Any violator who is assessed a civil penalty may also be assessed the cost of collection. All penalties and costs assessed shall be tendered and made payable to "the Office of State Administrative Hearings" and shall be deposited in the general fund of the state treasury.

(4) The Court shall have the power to issue writs of fieri facias to collect civil penalties and costs assessed, which shall be enforced in the same manner as a similar writ issued by a superior court.

Authority O.C.G.A. Secs. 50-13-40 and 50-13-41. **History**. **Adopted**: F. Feb. 8, 2019; eff. Feb. 28, 2019. **Amended**: F. June 22, 2020; eff. July 12, 2020.