

**CERTIFICATION OF ADMINISTRATIVE RULES  
FILED WITH THE SECRETARY OF STATE  
BRAD RAFFENSPERGER**

(Pursuant to O.C.G.A. Secs. 50-13-3, 50-13-4 and 50-13-6.)

I do hereby certify that the attached new rule and amendments are correct copies as promulgated and adopted on the 8th day of February, 2019.

OFFICE OF STATE ADMINISTRATIVE HEARINGS

February 8, 2019

Rule 616-1-2-.03 entitled "Referring Cases" is hereby amended as attached hereto.

Rule 616-1-2-.19 entitled "Subpoenas; Notices to Produce" is hereby amended as attached hereto.

Rule 616-1-2-.44 entitled "Powers of Administrative Law Judge" is hereby adopted as attached hereto.

Statutory Authority: O.C.G.A. Secs. 50-13-40, 50-13-41.

Michael Malihi  
Chief State Administrative Law Judge

Sworn to and subscribed before me this

8<sup>th</sup> day of February, 2019.

(Signature of Notary Public)



**RULES  
OF  
OFFICE OF STATE ADMINISTRATIVE HEARINGS**

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

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

(1) Except as provided in section (2) of this Rule, or unless otherwise provided by the Chief 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. The Chief State Administrative Law Judge may prescribe different forms for different Referring Agencies or for different type or classes of cases. The Chief State Administrative Law Judge may authorize the referral of multiple cases through alternative methods.

(2) Petition for Direct Appeal.

(a) If an agency fails to forward the hearing request for a contested case to the Office of State Administrative Hearings 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.

(b) The petition for direct appeal must include:

(i) The petitioner's name and mailing address;

(ii) The name of the agency that received the petitioner's hearing request;

(iii) The date the petitioner submitted the hearing request to the agency;

(iv) A brief description of the adverse action that prompted the petitioner's hearing request.

(c) The Office of State Administrative Hearings shall promptly issue a written determination granting or denying the petition. The granting or denial of the petition shall be within the Administrative Law Judge's discretion. However, the determination shall not be based on the merits of the contested case.

(d) If the petition for direct appeal is granted, the Office of State Administrative Hearings shall schedule the case for a hearing.

Authority: O.C.G.A. Secs. 50-13-40(c) and 50-13-41.

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

(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. § 24-13-25.

(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) An Administrative Law Judge shall have the power to enforce subpoenas through the imposition of civil penalties, pursuant to Rule 44.

(8) 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.

(9) 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. Secs. 50-13-40 and 50-13-41.

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

An Administrative Law Judge 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. In addition, an Administrative Law Judge shall have the power to impose civil penalties for failing to obey any lawful process or order of the Administrative Law Judge or any Rule or regulation promulgated by the Office of State Administrative Hearings, for failure to comply with subpoenas, for any indecorous or improper conduct committed in the presence of the Administrative Law Judge, or for submitting pleadings or papers for an improper purpose or containing frivolous arguments or arguments that have no evidentiary support. An Administrative Law Judge may impose a civil penalty for any such violation 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. The Administrative Law Judge shall have the power to issue writs of fieri facias to collect such penalties and costs assessed, which shall be enforced in the same manner as a similar writ issued by a superior court. 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.

Authority: O.C.G.A. Secs. 50-13-40 and 50-13-41.