OFFICE OF STATE ADMINISTRATIVE HEARINGS

NOTICE OF PROPOSED REVISIONS TO THE RULES AND REGULATIONS OF THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

CHAPTERS 616-1-1 and 616-1-2

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that, pursuant to the authority set forth below, the Chief Judge of the Office of State Administrative Hearings proposes to amend forty-nine rules and repeal one rule in Chapters 616-1-1 and 616-1-2 of the Rules and Regulations of the Office of State Administrative Hearings (OSAH). The proposed revisions were developed by OSAH's Rules Committee with the goals of providing a more comprehensive description of the organization and operations of OSAH and making Georgia's administrative procedure more navigable and accessible to the public.

Attached to this notice are synopses of each of the proposed rule changes (Attachment 1), a marked copy of the proposed rules with underlined and struck-through language indicating the proposed changes (Attachment 2), and an unmarked copy of the proposed rules (Attachment 3).

This notice and its attachments are being mailed to all persons who have requested in writing that they be placed on a mailing list. The notice and attachments may also be reviewed during normal business hours (Monday-Friday, 8:00 a.m. to 4:30 p.m.), excluding official state holidays, at OSAH's front desk, located at 225 Peachtree Street, N.E., Suite 400, Atlanta, Georgia 30303, or on OSAH's website, www.osah.ga.gov.

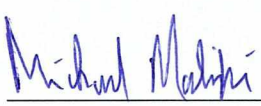
OSAH's Rules Committee will hear public comment on the proposed amendments during a hearing at the following date, time and location:

DATE: **JUNE 15, 2020**
TIME: **2:00 P.M.**
LOCATION: **THE OFFICE OF STATE ADMINISTRATIVE HEARINGS**
COURTROOM 1
225 PEACHTREE ST. NE, SUITE 400
ATLANTA, GA 30303

The proposed rule changes will be considered for adoption on June 22, 2020, at 8:30 a.m. at OSAH's offices, 225 Peachtree Street, N.E., Suite 400, Atlanta, Georgia 30303.

The adoption date is set for June 22, 2020, with an effective date of July 12, 2020. To ask questions or submit data, views, or arguments orally or in writing, please contact Sydney Habegger at telephone number (404) 651-6309 or email address shabegger@osah.ga.gov. Promulgation of rules and rule amendments is pursuant to O.C.G.A. §§ 50-13-4 and 50-13-40(c).

This 8th day of May, 2020.



MICHAEL MALIHI
Chief State Administrative Law Judge

ATTACHMENT 1

SYNOPSES OF PROPOSED REVISIONS TO THE RULES OF THE OFFICE OF STATE ADMINISTRATIVE HEARINGS, Chapter 616-1-1

(1) Rule 616-1-1-.01 ORGANIZATION

Purpose: To reorganize the rule, include section headings, update and abbreviate terms, remove extraneous language, and accurately describe the current internal organization of the Office of State Administrative Hearings.

Main feature: The rule will be reorganized and use section headings for clarity and readability. In the amended rule, and throughout the amended rules "Office of State Administrative Hearings" will be replaced by the terms "Administrative Court" or "Court," and "Chief State Administrative Law Judge" will be abbreviated to "Chief Judge." The amended rule will also describe the powers conferred on Administrative Law Judges in section (4), and provide a contemporary description of the organization of the Office of State Administrative Hearings by including references to the Deputy Chief Judge, special assistant administrative law judges, the executive assistant to the Chief Judge, and case management assistants in section (6).

(2) Rule 616-1-1-.02 REQUESTING INFORMATION FROM OR MAKING SUBMISSIONS TO THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

Purpose: To add section headings, remove extraneous language, update and abbreviate terms, and update references to the Office of State Administrative Hearings and its personnel.

Main feature: The rule will be revised to use the term "Court" instead of "Office of State Administrative Hearings," abbreviate "Administrative Law Judge" to "Judge" and "Chief State Administrative Law Judge" to "Chief Judge," reference the Executive Assistant to the Chief Judge, who is the appropriate contact for general and rulemaking information, and include section headings for clarity and readability.

(3) Rule 616-1-1-.03 RULEMAKING PROCEDURES

Purpose: To add section headings, abbreviate terms, and reorganize the rule for clarity.

Main feature: The rule will be revised to include section headings and reorganized into sections and subsections for readability and clarity. "Chief State Administrative Law Judge" will be abbreviated to "Chief Judge."

(4) Rule 616-1-1-.04 DECLARATORY RULINGS

Purpose: To simplify the declaratory ruling process, reorganize the rule into sections, and add section headings.

Main feature: The rule will be divided into sections and include section headings. The revised rule will also use the abbreviated term "Chief Judge" instead of "Chief State Administrative Law

Judge." Finally, the requirement that written petitions be submitted to the Chief Judge in triplicate will be removed.

(5) Rule 616-1-1-.05 CONTINUING JUDICIAL EDUCATION

Purpose: To use updated terminology.

Main feature: The rule, as revised, will use the terms "Chief Judge," instead of "Chief State Administrative Law Judge," "Judge," instead of "Administrative Law Judge," and "Court," instead of "Office of State Administrative Hearings." The amendments will effect no substantive changes to the continuing judicial education requirements.

(6) Rule 616-1-1-.06 CODE OF JUDICIAL CONDUCT

Purpose: To abbreviate terminology and express the rule in clearer language.

Main feature: The revised rule will use the term "Judges" instead of "Administrative Law Judges," replace "Office of State Administrative Hearings" with "Administrative Court," and clarify that the Georgia Code of Judicial Conduct applies to all judges of the Office of State Administrative Hearings.

(7) Rule 616-1-1-.07 OATH OF OFFICE

Purpose: To update the oath requirement for Office of State Administrative Hearings Administrative Law Judges to track the oath requirement for superior court judges.

Main feature: The revised rule will replace "Office of State Administrative Hearings" with Administrative Court," use abbreviated terminology, and clarify that the oath of office for Office of State Administrative Hearings Administrative Law Judges is identical to the oath prescribed for judges of the Georgia superior courts.

SYNOPSES OF PROPOSED REVISIONS TO THE RULES OF THE OFFICE OF STATE ADMINISTRATIVE HEARINGS, Chapter 616-1-2

(1) Rule 616-1-2-.01 DEFINITIONS

Purpose: To update definitions in the Administrative Rules of Procedure, include new definitions, remove superfluous definitions, and renumber the Rule in accordance with Secretary of State rules.

Main feature: The definitions applicable to the Administrative Rules of Procedure will be revised to include terminology used throughout the rules and remove outdated or unnecessary terms. The amended rule will include definitions for the terms "Administrative Court," "Court," "Agency," and "License," which are used elsewhere in the Rules. Additionally, the term "Judge" will be defined to include the Chief Judge and all persons appointed by the Chief Judge to conduct hearings. The extraneous terms, "Covered Agency" and "Referring Agency" will be replaced with the broader term "Agency." The terms "Initial Decision" and "Final Decision" will also be removed. Finally, the term "Clerk" will be expanded to include the Deputy Chief Clerk of the Office of State Administrative Hearings as well as the Chief Clerk.

(2) Rule 616-1-2-.02 SCOPE OF RULES

Purpose: To update the rule to implement amendments to the Administrative Procedure Act and use abbreviated terminology, and to remove extraneous language.

Main feature: The rule will be renamed "Scope of Rules." Additionally, The phrase "actions and proceedings before the Court" shall be used in section (1) of the rule to clarify that the Administrative Rules of Procedure are applicable to all proceedings before the Office of State Administrative Hearings, not simply those referred by agencies. Section (3) of the revised rule will use simplified language regarding the application of the CPA and Uniform Rules for the Superior Courts of Georgia. The revised rule will also use the terminology provided in the updated definitions. Finally, subsection (4) shall be removed from the rule, as it unnecessarily expresses the procedure for addressing conflicting laws.

(3) Rule 616-1-2-.03 COMMENCING A CONTESTED CASE

Purpose: To rename the rule, further describe the direct appeal process, provide that alternative means of commencing cases may be prescribed by law, remove extraneous language, reorganize the rule and add section headings for clarity, renumber paragraphs to conform to Secretary of State rules, and use updated terminology.

Main feature: The rule will be renamed "Commencing a Contested Case," amended to reflect terminology provided in amended Ga. Comp. R. & Regs. 616-1-2-.01, and reorganized with subsections and section headings for clarity and readability. In Section (1) of the amended rule, the word "law" will replace "the Chief State Administrative Law Judge" and the Chief Judge's authority to prescribe other means for referral of cases will be expressed in more concise language. Subsections (2)(b)(i)-(iv) of the rule will be renumbered to conform with Secretary of State rules. The rule will also use the phrase "with the Court" to paragraph (2)(a) in order to specify that petitions for direct appeal must be filed with the Office of State Administrative Hearings. Amended paragraph (2)(c) will ensure that the agency is sent a copy of the petition and given an

opportunity to respond. The phrase "within a reasonable time" will replace "promptly" in paragraph (2)(d). Finally, amended paragraph (2)(d) will include language clarifying that the Office of State Administrative Hearings will not schedule a hearing if the petition for direct appeal is denied.

(4) Rule 616-1-2-.04 FILING AND SUBMITTING DOCUMENTS

Purpose: To reorganize the rule into subsections and add section headings for clarity; use updated terminology; more accurately describe the filing process; specify the date on which documents submitted by mail, electronically, or in person are filed; provide administrative law judges with discretion in addressing nonconforming filings; and remove extraneous language.

Main feature: The rule will be amended to use updated terminology and reorganized with subsections and section headings for clarity and readability. Amended paragraph (2)(a) will provide that documents filed subsequent to case initiation shall be filed with the case management assistant. Section (4) of the amended rule will clarify when documents submitted in person or by mail or electronic means will be considered filed. The provision prescribing a specific process for the return and correction of nonconforming filings will be removed, thus leaving the process of addressing nonconforming filings to the Court's discretion.

(5) Rule 616-1-2-.05 COMPUTING TIME

Purpose: To consolidate Rules 5 and 6 by including the provision allowing the administrative law judge to adjust time limits prescribed by the Administrative Rules of Procedure for good cause.

Main feature: The provision allowing the administrative law judge to change the time limits prescribed by the Administrative Rules of Procedure, which is currently expressed in Rule 616-1-2-.06, will be included as section (3) of Rule 616-1-2-.05, as both rules concern similar subject matter.

(6) Rule 616-1-2-.06 CHANGES OF TIME

Purpose: To consolidate the provision allowing the administrative law judge to adjust time limits prescribed by the Administrative Rules of Procedure for good cause with the rule governing computing time.

Main feature: Rule 6 will be repealed. The rule, which allows the administrative law judge to change the time limits prescribed by the Administrative Rules of Procedure, will be included in Rule 616-1-2-.05 as section (3), as both rules concern similar subject matter.

(7) Rule 616-1-2-.07 BURDEN OF PROOF

Purpose: To reorganize the rule for clarity, use updated terminology, remove extraneous language, and provide that a judge may change the order of proof while clarifying that changing the order of proof does not alter the burden of proof.

Main feature: The rule, as amended, will provide that a party raising an affirmative defense shall bear the burden as to such affirmative defense in all cases. The rule will also eliminate the extraneous provision that the agency shall bear the burden of proof in a case involving the

reduction, suspension, or termination of a public assistance benefit, as this is covered by Section (1). Language providing that an applicant for a public assistance benefit shall bear the burden of proof will be consolidated with subsection (1)(b). Section (3) will provide that a judge may change the order of proof and clarify that changing the order of proof shall not affect the burden of proof.

(8) Rule 616-1-2-.08 PLEADINGS; AMENDMENTS TO PLEADINGS

Purpose: To use updated terminology and clarify time limits.

Main feature: The rule will be amended to use terminology provided in the updated definitions and to express time limits in calendar days.

(9) Rule 616-1-2-.09 NOTICE OF HEARING

Purpose: To use updated terminology and remove extraneous language.

Main feature: The rule will be amended to use the term "Court" instead of "Administrative Law Judge" and to clarify that time limits are measured in calendar days.

(10) Rule 616-1-2-.10 EX PARTE COMMUNICATIONS

Purpose: To use abbreviated terminology, express the rule in concise language, and clarify that the rule is applicable to all cases before the Office of State Administrative Hearings.

Main feature: The rule will be amended to clarify that it is applicable to all cases that are "before the Court," not only cases "referred" by agencies. The rule will also use the terms "Judge" and "Court" in accordance with the updated Rule definitions and remove redundant language from section (2).

(11) Rule 616-1-2-.11 SERVICE

Purpose: To use updated terminology, account for attorneys and personal representatives in service, add requirements for certificates of service, include clarifying language, and reorganize the rule for clarity.

Main feature: The term "Court" will be used in place of "Office State Administrative Hearings" throughout the amended rule. In section (1), the amended rule will provide that an attorney or authorized representative must be served if a party is so represented. The amended rule will clarify that service may be accomplished by first class mail. Section (3) will be amended to include the requirement that certificates of service include the fax number and/or email address of the person served. The provision that Rule 19 governs the service of subpoenas shall be included as amended section (4). Finally, in amended section (5) the term "Court" shall be used in place of "Clerk" to allow personnel other than the Chief Clerk or Deputy Chief Clerk to furnish contact information to the parties.

(12) Rule 616-1-2-.12 CONSOLIDATION; SEVERANCE

Purpose: To add section headings for clarity and use updated terminology.

Main feature: The term "Court" will be used instead of "Administrative Law Judge" throughout the amended rule. Additionally, the amended rule will use headings in sections (1) and (2) for clarity.

(13) Rule 616-1-2-.13 SUBSTITUTION OF PARTIES; INTERVENTION; JOINDER

Purpose: To reorganize the rule and add section headings for clarity, use updated terminology, replace one term for accuracy, and provide that consent for joinder must be express.

Main feature: The term "Court" will be used instead of "Administrative Law Judge" throughout the amended rule. Headings will be added to each section to improve readability. In section (3) of the amended rule, the term "person" will replace the term "party," as the latter term describes an entity that has been joined to a case. Finally, the term "express" will modify "consent" in section (3) to clarify that consent for joinder may not be implied or passive.

(14) Rule 616-1-2-.14 PREHEARING PROPOSALS; EXCHANGING EXHIBITS AND WITNESS LISTS

Purpose: To rename the rule, describe available prehearing procedures with specificity, reorganize the rule and add section headings for clarity, provide that discovery is not available in administrative proceedings, and use updated terminology.

Main feature: The rule will be renamed "Prehearing Proposals; Exchanging Exhibits and Witness Lists," and reorganized with subsections and section headings for clarity and readability. The term "Court" will replace the phrase "Administrative Law Judge" throughout the rule. The amended rule will provide additional matters that may be the subject of prehearing conferences and describe the Court's authority to order parties to submit written proposals and/or exchange exhibits and witness lists. Finally, the rule will clarify that it does not create a right to discovery.

(15) Rule 616-1-2-.15 SUMMARY DETERMINATION

Purpose: To impose additional requirements for motions for summary determinations and responses to such motions, provide the administrative law judge with discretion in addressing motions for summary determination, and reorganize the rule into subsections, abbreviate terms, and add section headings for clarity.

Main feature: The rule will be reorganized into subsections and include section headings. Amended sections (1) and (2) will impose additional requirements for motions for summary determination and responses thereto. Time limits will be expressed in calendar days. The term "Court" will replace "Administrative Law Judge" throughout the amended rule. Amended section (2) will describe when a judge may deem facts in the motion for summary determination admitted. The provision requiring the administrative law judge to issue an Initial or Final Decision if all issues are resolved by summary determination will be removed as superfluous. Paragraph (5)(b) of the amended rule will allow the judge to decline to grant summary determination where a matter is more appropriate for an evidentiary hearing.

(16) Rule 616-1-2-.16 MOTIONS

Purpose: To reorganize the rule for clarity, use abbreviated terms, remove extraneous language, and reference an amended Rule.

Main feature: Sections of the rule will be divided into subsections. The rule will also be reorganized for clarity. Amended section (2) will reference amended Rule 41 to avoid conflicting with that Rule. Throughout the amended rule, the term "Court" will replace the phrase "Administrative Law Judge."

(17) Rule 616-1-2-.17 WITHDRAWAL OF HEARING REQUEST; SETTLEMENT; AGENCY RESCISSION

Purpose: To rename the rule, provide procedure for agency rescissions of adverse action, include section headings, and use abbreviated terms.

Main feature: The rule will be renamed "Withdrawal of Hearing Request; Settlement; Agency Rescission" and include section headings. Section (1) of the amended rule will replace the word "may" with "shall" and provide for dismissals without prejudice. Throughout the rule, the word "Court" will replace the phrase "Administrative Law Judge." Section (2) of the amended rule will clarify that the Court must be notified of a settlement to enter a dismissal order. Finally, the section (3) will be added to cover instances in which the agency rescinds the adverse action that precipitated the appeal.

(18) Rule 616-1-2-.18 RULES OF EVIDENCE; OFFICIAL NOTICE; WEIGHT OF EVIDENCE

Purpose: To rename the rule, remove duplicative and extraneous language, reorganize the rule and add section headings for clarity, and use abbreviated terms.

Main feature: The rule will be renamed "Rules of Evidence; Official Notice; Weight of Evidence," and updated with terminology defined in amended Rule 1. Amended subsection (1)(a) will limit evidence that may be considered "not reasonably susceptible of proof." Extraneous language describing the types of evidence an Administrative Law Judge may consider will be deleted. Language governing written direct testimony will be removed as duplicative of Rule 21. Finally, amended section (2) will clarify that documents officially noticed shall be admitted into the record and allow the judge to take official notice of federal policy and procedure manuals under certain circumstances.

(19) Rule 616-1-2-.19 SUBPOENAS; NOTICES TO PRODUCE

Purpose: To reorganize the rule into sections and subsections, add section headings for clarity, use updated terminology, and prescribe form and procedural requirements for subpoenas and notices to produce.

Main feature: Sections of the rule will be split into subsections and amended to include headings. Amended paragraph (1)(a) will include language to clarify that it applies in instances where the party who issues the subpoena seeks objects or documents. The amended rule will use the term "Court" in place of "Administrative Law Judge," "Office of State Administrative Hearings," and

"Clerk." Section (2) of the amended rule will clarify that notices to produce may be served on "persons," as notices to produce may be, and often are, served on non-parties. Finally, the amended rule will provide that notices to produce may be signed by attorneys or representatives, if the party issuing the notice is represented.

(20) Rule 616-1-2-.20 DEPOSITIONS; WRITTEN DIRECT TESTIMONY

Purpose: To reorganize the rule, add section headings, use updated terminology, and clarify time limits.

Main feature: The rule will be reorganized and include section headings for clarity and readability. The term "Court" will replace the terms "Administrative Law Judge" and "Clerk" throughout the rule. In the amended rule, time limits will be expressed in either calendar or business days, as applicable. The requirement that answers to written questions be signed will be made applicable to "persons."

(21) Rule 616-1-2-.21 NATURE OF PROCEEDINGS

Purpose: To use updated terminology.

Main feature: The amended rule will use the term "Court" instead of "Administrative Law Judge," and "agency" instead of "Referring Agency" in accordance with the amendments to Ga. Comp. R. & Regs. 616-1-2-.01.

(22) Rule 616-1-2-.22 HEARING PROCEDURE

Purpose: To use updated terminology, reference Rule 44, and more accurately describe the process for certification of facts to the superior court for appropriate action.

Main feature: The amended rule will use the term "Court" instead of "Administrative Law Judge," and "agency" instead of "Referring Agency" in accordance with the amendments to Ga. Comp. R. & Regs. 616-1-2-.01. Amended subsection (1)(o) will reference Rule 44, which governs the powers of administrative law judges. Section (5) will be amended to clarify that the appropriate action against an offending person may include a finding of contempt and remove reference to a party's application for certification of facts to the superior court, as application is not a prerequisite for such action under the APA.

(23) Rule 616-1-2-.23 RECORD OF HEARINGS

Purpose: To use updated terminology, specify that physical evidence shall be part of the hearing record, use simplified language, and leave whether to require payment for the costs of producing a record to the Court's discretion.

Main feature: Paragraph (1)(e) of the amended rule will include "physical evidence" in order to specify that such evidence shall be part of the hearing record. Section (2) shall be reworded for clarity and provide that the Court "may," rather than "shall," charge the requesting party for the cost of producing and delivering audio recordings. The term "Court" shall replace "Administrative Law Judge" throughout the amended rule, and "Clerk" in Section (3).

(24) Rule 616-1-2-.24 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, BRIEFS

Purpose: To use updated terminology and allow for voluntary filing of proposed findings of fact, conclusions of law, or briefs.

Main feature: In the amended rule, the term "Court" will replace "Administrative Law Judge." Further, the amended rule will permit the Court to authorize, rather than require, the parties to file proposed findings of fact, conclusions of law, and briefs.

(25) Rule 616-1-2-.25 NEWLY DISCOVERED EVIDENCE

Purpose: To update the rules of the Office of State Administrative Hearings for clarification, for conformity, and for ease of reading.

Main feature: Add "After the close of the hearing record, but" at the commencement of the rule for clarification; Delete "an Initial or Final" and "the Administrative Law Judge" in the first and second lines for grammatical purposes and ease of reading; Revise by changing "Administrative Law Judge" to "Court" in the fourth and fifth lines to conform with revised definitions.

(26) Rule 616-1-2-.26 CLOSURE OF HEARING RECORD

Purpose: To update the rules of the Office of State Administrative Hearings for clarification and for conformity.

Main feature: Revise by changing "Administrative Law Judge" to "Court" in the second line to conform with revised definitions; Add "or authorize" for clarification

(27) Rule 616-1-2-.27 DECISIONS

Purpose: To update the rules of the Office of State Administrative Hearings for conformity, for ease of reading, and to reflect the amendments to O.C.G.A. § 50-13-41 effected by the passage of HB790 during the 2018 Legislative Session.

Main feature: Revise by changing "Administrative Law Judge" to "Court" to conform with revised definitions; Delete the words "Initial or Final" in the heading and rule for ease of reading; Add section (3) to reflect the amendments to O.C.G.A. § 50-13-41 effected by the passage of HB790 during the 2018 Legislative Session.

(28) Rule 616-1-2-.28 MOTIONS FOR RECONSIDERATION OR REHEARING

Purpose: To update the rules of the Office of State Administrative Hearings for clarification and to provide a review standard.

Main feature: Revise heading to delete reference to "stay of initial or final decision"; Revise section (1) by adding "calendar" to clarify the time period for filing; Revise sections (1) and (2) by deleting reference to the words "initial or final" in regard to decisions for ease of reading;

Revise sections (1), (2) and (3) by changing "Administrative Law Judge" to "Court" to conform with revised definitions; Revise section (2) to specify the types of motion the section references; Revise section (3) by adding "reconsideration" to clarify the section applies to both types of motions; Add sections (3) and (4) to provide standards for both filing and judicial review of a motion for reconsideration or rehearing.

(29) Rule 616-1-2-.29 REMANDS

Purpose: To update the rules of the Office of State Administrative Hearings for clarification and for ease of reading.

Main feature: Revise section (1) by changing "Administrative Law Judge" to "Court" to conform with revised definitions, by changing "either on the Administrative Law Judge's own motion or at the motion of any party" to "at its discretion or upon motion of a party" for ease of reading, by deleting "Referring" in reference to the Agency, the phrase "at any time" and the phrase "among other things" for grammatical purposes, ease of reading and to conform with revised definitions, by changing "matter" to "pending case" to conform with revised definitions, by changing "insuring" to "ensuring" for grammar purposes, and by changing the format to create two sections for ease of reading; Delete section (2).

(30) Rule 616-1-2-.30 DEFAULT

Purpose: To update the rules of the Office of State Administrative Hearings for clarification and for ease of reading.

Main feature: Revise section (1) by changing the format to create subsections for ease of reading; Revise section (1) by changing "that" to "who" for grammatical purposes; Revise section (1) by adding that failure to appear is a basis for default for purposes of clarification; Revise section (1) by changing "order" to "judgment" and "order" to "default", and by deleting the word "Any" for grammatical purposes and ease of reading; Revise section (1) by changing "Administrative Law Judge" to "Court" to conform with revised definitions. Revise section (2) by deleting the word "Any" and changing "order" to "judgment" for purposes of ease of reading; Revise section (2) by separating it into two sections for formatting purposes and ease of reading; Revise section (2) by changing "order" to "judgment" and "Administrative Law Judge" to "Court" to conform with revised definitions; Revise section (2) by adding statement regarding Court's authority to dismiss a hearing based on the requesting party's failure to appear; Revise section (3) by adding "calendar" to clarify the permitted time period to file a motion to vacate; Revise section (3) by changing "order" to "judgement" for grammatical purposes and ease of reading; Revise section (3) by adding statement clarifying the Court's authority to accept untimely motions if good cause is established; Revise section (4) by changing "Administrative Law Judge" to "Court" to conform with revised definitions; Delete section (5) for purposes of redundancy as it was simplified and rewritten and added to the end of section (2).

(31) Rule 616-1-2-.31 EMERGENCY OR EXPEDITED PROCEDURES

Purpose: To update the rules of the Office of State Administrative Hearings for conformity and for ease of reading.

Main feature: Revise to changing “Administrative Law Judge” to “Court” to conform with revised definitions; Revise by changing “shall” to “may” and “such” to “the” to clarify the Court’s discretion and for grammatical purposes and ease of reading.

(32) Rule 616-1-2-.32 RECUSAL

Purpose: To update the rules of the Office of State Administrative Hearings for conformity, for grammatical correctness and for ease of reading.

Main feature: Revise heading by deleting “of an Administrative Law Judge” for ease of reading; Revise entirety of rule by deleting reference of “Administrative Law” prior to “Judge” and changing “An” to “A” before each reference for grammatical correctness and ease of reading; Revise section (2) by changing “the” to “his or her” and deleting “of the Administrative Law Judge” for grammatical purposes and ease of reading; Revise subsection (2)(a) by changing “concerning” to “relevant to” for grammatical purposes and ease of reading; Revise subsection (2)(b) by changing “matter in controversy” to “case” and deleting “or” for grammatical purposes and ease of reading; Revise subsection (2)(b) to create two additional alphabetical subsections for ease of reading, and in those additional subsections changing “concerning the matter” to “in the case” and “has been” to “was”, and deleting “or” for grammatical purposes and ease of reading; Revise subsection 2(c) by changing “spouse of the Administrative Law Judge” to “Judge’s spouse” and “family of the Administrative Law Judge” to “Judge’s family” and adding “Judge’s” before “household” for grammatical purposes and ease of reading; Revise subsection (2)(c) to create additional numerical subsections for ease of reading; Revise section (3) by adding “Judge’s” before “spouse” and before “household” and deleting “of the Administrative Law Judge” for grammatical purposes and ease of reading; Revise section (4) by adding “parties’” and “to waive disqualification” for grammatical purposes and ease of reading; Revise section (5) by changing “Any” to “A” and by deleting “after receipt of notice indicating that the Administrative law Judge will preside or promptly” and “whichever is later” for grammatical purposes and ease of reading; Revise section (6) to create two additional sections for ease of reading; Revise section (6) by adding “from presiding over the pending case” for clarification and ease of reading.

(33) Rule 616-1-2-.33 ACCESS TO RECORDS

Purpose: To update the rules of the Office of State Administrative Hearings for clarification and for ease of reading.

Main feature: Revise heading by renaming “Transfer of the Record to Referring Agency” to “Access to Records”; Revise rule by deleting “Following the entry of an Initial Decision”, “Initial”, “tapes or other” and “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.”; Revise rule by changing “Clerk” to “Court”, “compile and certify” to “make”, and “hearing” to “case” for clarification and ease of reading; Revise rule by adding “available and/or accessible” for clarification and ease of reading; Revise rule by changing “Referring Agency” to “parties” to clarify that the record is available to both parties.

(34) Rule 616-1-2-.34 ATTORNEYS

Purpose: To update the rules of the Office of State Administrative Hearings for clarification, for ease of reading, and to conform to revised rules.

Main feature: Revise heading by deleting "Appearance by" and "Signing of Pleadings" for ease of reading; Add titles to sections for ease of reading; Revise rule throughout by changing "Administrative Law Judge" to "the Court" to conform with revised definitions; Revise section (1) by changing reference to section (2) to sections (3) and (4) to conform to rule revisions; Revise section (1) by changing format to create two sections for ease of reading; Revise section (1) by deleting "and" for grammatical purposes and to conform with change in format; Revise section (1) by adding "No attorney shall represent a party before the Court until he or she" and "or a signed pleading or motion"; Revise section (1) by deleting "in the attorney's individual name"; Revise section (1) to add "that includes:" and subsection (a) "the style and number of the case;" and subsection (b) "the identity of the party for whom the appearance is made; and" and subsection (c) "the name, assigned state bar number, current office address, telephone number, and email address of the attorney."; Revise section (1) by deleting "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"; Revise format to change section (2)(a) and (2)(b) to become (3) and (4) for ease of reading; Revise section (2)(b) to delete "member" as unnecessary; Add section "Appointment of Counsel. Except as provide by law, the Court is not authorized to appoint attorneys to represent a party" for purposes of clarification; Delete section (3).

(35) Rule 616-1-2-.35 INVOLUNTARY DISMISSAL

Purpose: To update the rules of the Office of State Administrative Hearings for ease of reading.

Main feature: Change format to create two sections for ease of reading; Delete "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" for ease of reading; Add "A party's decision to move for dismissal" for ease of reading; Change "waive its" to "constitute a waiver of the party's" for ease of reading; Add "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" for ease of reading; Change "the Administrative Law Judge" to "The Court" to conform with revised definitions; Delete "an Initial or Final" for ease of reading.

(36) Rule 616-1-2-.36 MEDIATION

Purpose: To update the rules of the Office of State Administrative Hearings for ease of reading.

Main feature: Revise heading and rule by changing "Alternative Dispute Resolution" to "Mediation" for ease of reading; Change format to create two sections for ease of reading; Change "Office of State Administrative Hearings" to "Court" to conform with revised definitions; Change "an" to "a" for grammatical purposes; Add "and" for grammatical purposes; Delete ", and inexpensive" for ease of reading; Add "Any party may file a written request for mediation with the Court" for clarification.

(37) Rule 616-1-2-.37 REQUEST FOR AGENCY RECORDS

Purpose: To update the rules of the Office of State Administrative Hearings for ease of reading, for clarification and to conform to current law.

Main feature: Delete "or permit holder" for ease of reading and to conform to updated definitions; Delete section (2) to conform with changes in the law; Add "Release of child abuse records shall be governed by O.C.G.A. §§ 49-5-40 through -46." for clarification.

(38) Rule 616-1-2-.38 DISCOVERY

Purpose: To update the rules of the Office of State Administrative Hearings for ease of reading.

Main feature: Delete "available in any proceeding before an Administrative Law Judge except to the extent specifically" and "Nothing in this Rule is intended to limit the provisions of Article 4 of Chapter 18 of Title 50 or Rule 37." and Add "permitted" for ease of reading.

(39) Rule 616-1-2-.39 AGENCY REVIEW; JUDICIAL REVIEW

Purpose: To update the rules of the Office of State Administrative Hearings for purposes of ease of reading and for clarification.

Main feature: Revise heading to add "Agency Review"; Delete Rule and replace with two sections setting forth the process for "Agency Review" and "Judicial Review" for clarification and for ease of reading.

(40) Rule 616-1-2-.40 CIVIL PENALTIES REQUESTED BY THE DEPARTMENT OF NATURAL RESOURCES

Purpose: To update the rules of the Office of State Administrative Hearings for purposes of ease of reading and for clarification.

Main feature: Revise heading by adding "Civil" and changing "in" to "by the" for ease of reading and clarification; Combine sections (1) and (2) for ease of reading; Revise section (1) by deleting "for hearing" and adding ", which shall contain:"; Revise section (2) by deleting "A petition for hearing on civil penalties shall contain:"; Revise section (2) by changing "a hearing is requested" to "the contested case is commenced" for ease of reading and to conform to revised definitions; Revise section (3) by changing "Upon filing the petition, the Clerk shall issue" to "The petition shall be accompanied by a"; Revise section (3) by deleting "and" and adding "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" for ease of reading; Revise section (3) further by adding "Upon the filing of the petition and summons, the Clerk shall sign and" and "agency"; Revise section (3) by deleting "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. A return of service for each summons and petition shall be filed with the Clerk promptly after service." and adding in its place "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."

(41) Rule 616-1-2-.41 CONTINUANCES; CONFLICTS

Purpose: To update the rules of the Office of State Administrative Hearings for ease of reading, for clarification, and to conform with revised rules.

Main feature: Revise rule by changing format to create subsections for ease of reading; Revise rule by adding headings to sections for ease of reading; Revise section (1) by adding "In determining whether to grant a motion for continuance," for ease of reading and clarification; Revise section (1) by changing "Administrative Law Judge" to "Court" to conform with revised Definitions and for ease of reading; Revise section (1) by changing "the calendar of the Administrative Law Judge" to "the Court's calendar" for grammatical purposes, for ease of reading and to conform to revised definitions; Revise section (1) by deleting "unless the notice expressly requests a continuance" for ease of reading; Revise section (1) by adding "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." to expressly state Court's authority; Revise section (2) by changing "Office of State Administrative Hearings" to "Court" to conform with revised definitions and for ease of reading; Revise section (2) by adding "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." to clarify the requirements when a party files a conflict letter and seeks a continuance simultaneously.

(42) Rule 616-1-2-.43 NEWS COVERAGE OF HEARINGS

Purpose: To update the rules of the Office of State Administrative Hearings for purposes of clarification.

Main feature: Delete rule and replace with "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."

(43) Rule 616-1-2-.44 POWERS OF ADMINISTRATIVE LAW JUDGE

Purpose: To update the rules of the Office of State Administrative Hearings to conform to rule revisions, for ease of reading, for grammatical purposes and for clarification.

Main feature: Revise heading by deleting "Adopted." Revise rule by changing format to create sections and subsections for ease of reading; Revise rule by changing "An Administrative Law

Judge" and "In addition, an Administrative Law Judge" to "The Court" to conform to revised Definitions and for ease of reading; Revise rule by changing "Administrative Law Judge" and "Office of State Administrative Hearings" to "Court" to conform to revised definitions and for ease of reading; Revise rule by deleting "for" and changing "failure" to "failing" for ease of reading and for grammatical purposes; Revise rule by deleting "Administrative Law" for ease of reading; Revise rule by deleting "for any such violation" for ease of reading; and Revise rule by changing "such" to "civil" for clarification.

ATTACHMENT 2

616-1-1-.01 Organization

(1) ***Administrative Court.*** The Office of State Administrative Hearings ~~is empowered by statute to adjudicate contested cases on behalf of state agencies.~~ shall also be known as the "Administrative Court" or "Court," which shall be comprised of the Chief State Administrative Law Judge, Assistant Administrative Law Judges, and other personnel. ~~The state agencies that are required to refer contested cases to the Office of State Administrative Hearings for resolution are listed in O.C.G.A. § 50-13-2(1), (42). Other state agencies may contract with the Office of State Administrative Hearings for Adjudication Services.~~

(2) ***Jurisdiction.*** The Court has jurisdiction over the adjudication of contested cases pursuant to O.C.G.A. §§ 50-13-2(2), -41, and -42. Other agencies may contract with the Court for adjudication services. ~~The Office of State Administrative Hearings is administered by the Chief State Administrative Law Judge. The Chief State Administrative Law Judge is appointed by the Governor for a term of six (6) years and may be removed by the Governor for cause. The Chief State Administrative Law Judge is authorized to appoint all Office of State Administrative Hearings personnel and to promulgate rules and regulations governing the operations and hearing procedures of the Office of State Administrative Hearings.~~

(3) ***Chief State Administrative Law Judge (Chief Judge).***

(a) The Court shall be administered by the Chief Judge. The Chief Judge is appointed by the Governor for a term of six (6) years, is eligible for reappointment, and may be removed by the Governor for cause.

(b) The Chief Judge is the chief presiding and administrative officer of the Court and is authorized to appoint Judges and support personnel and promulgate rules of practice and procedure before the Court.

~~Other staff in the Chief State Administrative Law Judge's office include:~~

~~(a) a Deputy Chief Administrative Law Judge who assists the Chief State Administrative Law Judge in managing the Office of State Administrative Hearings;~~

~~(b) an Administrative Assistant to the Chief State Administrative Law Judge who is responsible for providing information to and receiving submissions from the public as described in Rule 02; and~~

~~(c) a Chief Clerk who is responsible for receiving and filing all submissions authorized or required to be filed with the Office of State Administrative Hearings.~~

(4) ***Administrative Law Judges.*** The Chief Judge may appoint full-time and part-time Assistant Administrative Law Judges. Each Judge of the Court is appointed by the Chief Judge and shall exercise the powers conferred upon the Chief Judge in all contested cases assigned to them. Each Judge shall have been admitted to the practice of law in this state for a period of at least seven years and shall be in the unclassified service.

(5) ***Special Assistant Administrative Law Judges.*** The Chief Judge may appoint Special Assistant Administrative Law Judges on a temporary or case-by-case basis as may be necessary for the proper performance of the duties of the Court, pursuant to a fee schedule established in advance by the Chief Judge.

(6) ***Other Personnel.*** The Chief Judge may appoint other personnel, which may include, but not be limited to, the following:

(a) a Deputy Chief Judge, who assists the Chief Judge in managing the Court;

(b) an Executive Assistant to the Chief Judge, who is responsible for assisting the Chief Judge with administrative tasks;

(c) Clerks, who are responsible for recordkeeping and receiving and filing case-initiating documents; and

(d) Case management assistants, who are responsible for assisting their assigned judges with administrative tasks and providing information to and receiving submissions from the public.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

616-1-1-.02 Requesting Information from or Making Submissions to the ~~Office of State Administrative Hearings~~ Court

(1) ***General.*** General information about the ~~Office of State Administrative Hearings'~~ Court's operations may be obtained from the ~~Administrative~~ Executive Assistant to the Chief ~~State Administrative Law~~ Judge.

(2) ***Rulemaking.*** Requests for information or submissions concerning public participation in rulemaking pursuant to Rule 03 may be directed to the Executive ~~Administrative~~ Assistant to the Chief ~~State Administrative Law~~ Judge.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

616-1-1-.03 Rulemaking Procedures

(1) ***Submission.*** To petition for the promulgation, amendment, or repeal of a rule, a written petition shall be submitted to the Chief ~~State Administrative Law~~ Judge.

(2) ***Contents.*** The petition shall state fully

(a) the rule involved~~,~~;

(b) the reason for the desired change~~,~~;

(c) the parties that will or can be affected by the petitioned change~~,~~; and

(d) any additional facts known to the petitioner that might influence the decision of the Chief ~~State Administrative Law~~ Judge to initiate rulemaking.

Statutory Authority

O.C.G.A. Sec. 50-13-9; 50-13-40(c).

616-1-1-.04 Declaratory Rulings

(1) ***Requirements.*** A declaratory ruling must affect a specific fact situation and specific parties, including the person requesting the ruling. The Chief ~~State Administrative Law~~ Judge shall not issue a declaratory ruling on an issue in a matter pending before a~~n Office of State Administrative Hearings Administrative Law~~ Judge or on a hypothetical fact situation.

(2) ***Petition for Declaratory Ruling.***

(a) To petition for a declaratory ruling as to the applicability of a statute or rule, a petitioner shall submit ~~three (3) copies of the~~ a written petition to the Chief ~~State Administrative Law~~ Judge. The petition shall state all of the facts, including the names of those parties involved in the fact situation, and shall include a statement of the legal issue to be resolved.

(b) The petitioner shall serve a copy of the petition on all persons involved in the fact situation by personal delivery or first class mail, and shall attach to the petition a certificate or acknowledgment of service.

(c) Any person may seek to participate in a declaratory ruling proceeding in the matter and under the standards provided by O.C.G.A. § 50-13-14.

Statutory Authority

O.C.G.A. Sec. 50-13-11; 50-13-40(c).

616-1-1-.05 Continuing Judicial Education

(1) The minimum continuing judicial education requirement for a~~n Administrative Law~~ Judge is as follows:

(a) A~~n Administrative Law~~ Judge shall obtain twelve (12) hours of credit annually for instruction from an approved continuing judicial or legal education program.

(b) A~~n Administrative Law~~ Judge who earns more than twelve (12) hours of credit in a year may, with express approval of the Chief ~~State Administrative Law~~ Judge, apply the excess credit to the requirement for the succeeding year.

(c) Of the twelve (12) hours of credit obtained each year, at least one (1) hour of credit shall relate to the Code of Judicial Conduct.

(d) The Chief ~~State Administrative Law~~ Judge may exempt a~~n Administrative Law~~ Judge from the continuing judicial education requirement upon a finding of undue hardship. To obtain an exemption, a~~n Administrative Law~~ Judge shall file a request for exemption with the Chief ~~State Administrative Law~~ Judge no later than the first day of December for the year the exemption is sought.

(2) A~~n Administrative Law~~ Judge may receive credit by participating in Continuing Judicial Education programs of the~~ Office of State Administrative Hearings~~ Court. A~~n Administrative Law~~ Judge who seeks credit for attending programs listed in subparagraphs (a) through (e) shall provide to the Chief ~~State Administrative Law~~ Judge in advance of attendance a description of the program for which credit is sought. A~~n Administrative Law~~ Judge may receive credit by participating in one or more of the following:

(a) programs sponsored by the Institute of Continuing Legal Education accredited by the State Bar of Georgia's Commission on Continuing Lawyer Competency;

(b) programs sponsored by the Institute of Continuing Judicial Education;

(c) courses sponsored by the National Judicial College or any American Bar Association accredited law school, whether for credit or not;

(d) programs sponsored by the National Association of the Administrative Law Judiciary and its affiliates; or

(e) other education programs approved in advance of attendance by the Chief~~ State Administrative Law~~ Judge.

(3) A~~n Administrative Law~~ Judge shall receive one (1) hour of credit for each hour of attendance in a program listed in paragraph (2), three (3) hours of credit for each hour of

teaching in such a program, six (6) hours of credit for each hour of instruction when a handout is prepared and distributed, and two (2) hours of credit for each hour as a panelist.

(4) A~~n Administrative Law~~ Judge shall file a compliance report with the Chief ~~State Administrative Law~~ Judge no later than the end of the second week in December of the year for which the report is submitted.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

616-1-1-.06 Code of Judicial Conduct

~~An Office of State Administrative Hearings Administrative Law Judge is subject to the Georgia Code of Judicial Conduct.~~ The Georgia Code of Judicial Conduct shall apply to all Judges of the Administrative Court.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

616-1-1-.07 Oath of Office

~~An Office of State Administrative Hearings Administrative Law Judge~~Judges of the Administrative Court shall take the oath prescribed for judges of the Georgia superior courts~~, along with all other oaths required for civil officers~~.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

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:

~~(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.~~

(1) "Administrative Court" or "Court" means the Office of State Administrative Hearings or a Judge of the Office of State Administrative Hearings.

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

~~(b) "APA" means the Georgia Administrative Procedure Act, O.C.G.A. Title 50, Chapter 13.~~

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

~~(d)~~(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.

~~(e) "Covered Agency" means an agency required to refer contested cases to the Office of State Administrative Hearings.~~

~~(f)~~(5) "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 reviewable by the Referring Agency not reviewable by an agency.~~

~~(h) "Initial Decision" means a decision entered by an Administrative Law Judge that is reviewable by the Referring Agency an agency.~~

(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.

~~(i)~~(8) "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)~~(9) "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).

Statutory Authority O.C.G.A. Sec. 50-13-40(c)**.**

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

(1) This Chapter governs all actions and proceedings before the Court ~~contested cases referred to the Office of State Administrative Hearings~~.

(2) At ~~an Administrative Law Judge's~~ 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 may~~shall~~ be resolved at the ~~Administrative Law Judge's~~ Court's discretion~~, as justice requires. The Administrative Law Judge~~ Court ~~may refer to~~by applying the CPA ~~and~~ or the Uniform Rules for the Superior Courts of Georgia ~~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.~~

Statutory Authority O.C.G.A. Sec. 50-13-40(c); 50-13-41**.**

616-1-2-.03 ~~Referring Cases~~ Commencing a Contested Case

(1) ***Agency Referrals.*** Except as provided in section (2) of this Rule, or unless otherwise provided by ~~the Chief Administrative Law Judge~~ law, ~~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~~ 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 ~~State Administrative Law~~ Judge may prescribe ~~different forms for different Referring Agencies or for different type of classes of cases~~ the means by which referrals are accepted. ~~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 a hearing request ~~for a hearing request for a contested case~~ to the ~~Office of State Administrative Hearings~~ 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:

~~(i)~~1. The petitioner's name and mailing address;

~~(ii)~~2. The name of the agency that received the petitioner's hearing request;

~~(iii)~~3. The date the petitioner submitted the hearing request to the agency;

~~(iv)~~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 10 business days after receipt of the petition to respond to the petition for direct appeal.

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

~~(d)~~(e) If the ~~petition for direct appeal is granted~~ Court grants the petition for direct appeal, the ~~Office of State Administrative Hearings~~ Court shall schedule the petitioner's case for a hearing. If the Court denies the petition, a hearing will not be scheduled.

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

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

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

(a) All ~~case-related~~ documents filed with the Court shall be ~~filed on~~ in 8 1/2" x 11"~~-inch paper~~ format. ~~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.~~

(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 ~~Administrative Law~~ 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.*** ~~The Clerk's~~ Office hours shall be 8:00 a.m. to 4:30 p.m., Monday through Friday, ~~except~~ excluding State ~~legal~~ H~~h~~olidays. ~~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) ***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. ~~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 his 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~~. The Court, at its discretion, may return a nonconforming submission with a reference to the applicable Rule(s) and a deadline for resubmission.

Statutory Authority O.C.G.A. Sec. 50-13-40(c); 50-13-13; 50-13-41.

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 ~~Clerk's office~~ 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.

Statutory Authority O.C.G.A. Sec. 50-13-40(c); 50-13-41**.**

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

~~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.~~

616-1-2-.07 Burden of Proof

(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;~~

(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 or public assistance benefit 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; and

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

(2) Prior to the commencement of the hearing, the ~~Administrative Law Judge~~ 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.

Statutory Authority O.C.G.A. Sec. 50-13-40(c); 50-13-13; 50-13-41.

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

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

Statutory Authority O.C.G.A. Sec. 50-13-13; 50-13-40(c); 50-13-41**.**

616-1-2-.09 Notice of Hearing

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

Statutory Authority O.C.G.A. Sec. 50-13-13; 50-13-40(c); 50-13-41**.**

616-1-2-.10 Ex Parte Communications

(1) Once a case ~~has been referred to the Office of State Administrative Hearings~~ is before the Court, 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~~ the Judge may communicate with ~~an~~other ~~Administrative Law~~ 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 ~~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 a~~n Administrative Law~~ Judge receive a communication prohibited by this Rule, ~~the Administrative Law Judge~~ he or she shall notify all parties of the receipt of such communication and its content.

Statutory Authority O.C.G.A. Sec. 50-13-40(c); 50-13-41.

616-1-2-.11 Service

(1) A party filing a document or other submission with the ~~Office of State Administrative Hearings~~ 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. ~~Service shall be by first class mail, 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~~. Service shall be by first class mail, fax, email, or personal delivery. Service by first class mail shall be complete upon mailing ~~by first class mail~~, with proper postage attached.

(3) Every filing shall be accompanied ~~either~~ by an acknowledgment of service ~~from the~~ for each person served; by ~~his or her~~ an acknowledgment of service from the ~~person served, by his or her~~ 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 ~~Clerk~~ 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.

Statutory Authority O.C.G.A. Sec. 50-13-40(c).

616-1-2-.12 Consolidation; Severance

(1) ***Consolidation.*** In cases involving common issues of law or fact, ~~an Administrative Law Judge~~ 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 ~~an Administrative Law Judge~~ 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 ~~Administrative Law Judge~~ Court may sever the party or issue for a separate hearing.

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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

(1) ***Substitution.*** ~~An Administrative Law Judge~~ 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, ~~an Administrative Law Judge~~ the Court may limit the factual or legal issues that may be raised by an intervenor.

(3) ***Joinder.*** ~~An Administrative Law Judge~~ The Court is not authorized to join a ~~party~~ person to any proceeding without ~~the~~ that ~~party's~~ person's express consent.

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(6); 50-13-14; 50-13-40(c).

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

(1) ***Conferences.*** ~~An Administrative Law Judge~~ 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. ~~At the discretion of the Administrative Law Judge, prehearing conferences may be conducted in whole or in part by telephone.~~

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

(v) objections to the introduction ~~into evidence at the hearing~~ 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 ~~Administrative Law Judge~~ 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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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 judgment as a matter of law.

(a) There shall be included in the motion or attached thereto a ~~short and~~ 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) ~~Such~~ 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 ~~short~~ 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.

~~(3)~~(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, or that the moving party is not entitled to judgment as a matter of law.

~~(4)~~(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.

~~(5)~~(4) ***Oral Argument and Written Submissions.*** The ~~Administrative Law Judge~~ Court may set the motion for oral argument and call for the submission of proposed findings of fact, conclusions of law, and briefs.

~~(6)~~(5) ***Ruling.*** The ~~Administrative Law Judge~~ 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 ~~Administrative Law Judge~~ Court may continue the hearing.

~~The Administrative Law Judge shall rule on a motion of summary determination in writing.~~

~~If all factual issues are decided by summary determination, the Administrative Law Judge shall issue on Initial or Final Decision.~~

(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.

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

616-1-2-.16 Motions

(1) All requests made to the ~~Administrative Law Judge~~ 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.

~~(2)~~(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~~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 ~~Administrative Law Judge~~ Court for good cause prior to the expiration of the ~~ten (10) day~~ 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.

~~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.~~

~~(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.~~

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 ~~Administrative Law Judge~~ Court may order the submission of briefs or oral argument relative to any motion.

~~(6)~~(7) 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.~~

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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

(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 ~~Administrative Law Judge~~ Court ~~may~~ 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 ~~Administrative Law Judge~~ Court, upon receiving notification of such settlement, shall enter an order of dismissal with prejudice.

(3) ***Agency Rescission.*** An agency may move to rescind the adverse action underlying the contested case, whereupon if the motion is granted, the Court shall enter an order of dismissal with prejudice or without prejudice.

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(4); 50-13-40(c).

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

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

(a) ~~As provided by the APA~~, The ~~Administrative Law Judge~~ 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. However, a party's failure to call an available witness to testify does not render such witness' testimony "not reasonably susceptible of proof.

~~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.~~

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

(c) The ~~Administrative Law Judge~~ 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 ~~Administrative Law Judge~~ 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 ~~Administrative Law Judge~~ Court requires otherwise. In any event, the expert may be required to disclose the underlying facts or data on cross-examination.

~~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.~~

(e) Whenever any oral testimony sought to be admitted is excluded by the ~~Administrative Law Judge~~ 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.*** ~~Official notice may, in the discretion of the Administrative Law Judge, be taken~~ The Court may, at its discretion, take official notice 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 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 ~~Administrative Law Judge~~ Court may take official notice of the contents of policy and procedure manuals promulgated by agencies for which the ~~Office of State Administrative Hearings~~ 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 ~~Administrative Law Judge~~ 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 ~~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~~ provision without further authentication.

2. In addition, the ~~Administrative Law Judge~~ Court or any party may incorporate material from any manual ~~so~~ 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) ~~Official notice may also be taken~~ The Court may take official notice of any fact alleged, presented, or found in any other hearing before ~~an Administrative Law Judge~~ 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 ~~Administrative Law Judge~~ Court based upon its reliability and probative value.

Statutory Authority O.C.G.A. Sec. 50-13-15; 50-13-40(c).

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, ~~or~~ the deposed testimony of the witness, or the production of objects or documents 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)~~(b) ~~Subpoenas~~ Subpoena forms may be obtained from the ~~Office of State Administrative Hearings~~ 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 in accordance with Rule 11; and

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

~~(4)~~(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 ~~less~~ 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 upon~~ 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.

~~(5)~~(e) Once issued, a subpoena may be quashed by the ~~Administrative Law Judge~~ Court if it appears that

1. the subpoena is unreasonable or oppressive;

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

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

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

(f) The ~~Administrative Law Judge~~ Court 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)~~(g) ~~An Administrative Law Judge~~ 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.

~~(8)~~(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~~ person, 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) A notice to produce shall be:

1. in writing;

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

3. ~~The notice shall be~~ directed to and served upon ~~the opposing party or the opposing party's attorney~~ the person having possession, custody, or control of the documents or objects;

4. served in accordance with Rule 11; and

5. ~~A copy of any notice to produce shall be~~ filed with the ~~Clerk~~ Court.

(b) Service may be perfected in accordance with paragraph ~~(4)~~ (1)(c) of this Rule, but no fees or mileage shall be allowed therefor.

(c) Paragraph ~~(5)~~ (1)(e) of this Rule shall apply to notices to produce.

Statutory Authority O.C.G.A. Secs. 50-13-13(a)(7), (b); 50-13-40(c).

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

(1) At any time during the course of a proceeding, the ~~Administrative Law Judge~~ Court may order ~~that~~ the testimony of a witness ~~is~~ 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 ~~Administrative Law Judge~~ Court may specify whether the scope of examination by deposition should be limited.

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

~~(a)~~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.

~~(b)~~(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 ~~Clerk~~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.

~~(c)~~(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.

~~(d)~~(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.

~~(e)~~4. The deposition shall be transcribed, certified, and filed with the ~~Clerk~~ 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 ~~Clerk~~ 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 ~~Administrative Law Judge~~ 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.

~~(f)~~5. Documents and ~~things~~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.

~~(4)~~(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 ~~paragraphs (1), (2) and (3)~~ subsection (2) of this Rule.

(c) If the ~~Administrative Law Judge~~ 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 ~~attorney~~ person making them.

~~(5)~~(d) Unless otherwise ordered by the ~~Administrative Law Judge~~ 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.

~~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.~~

~~Whenever used in this Rule, the word "witness" shall be construed to include parties.~~

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

616-1-2-.21 Nature of Proceedings

(1) In a hearing conducted under this Chapter, the ~~Administrative Law Judge~~ Court 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~~ Court may make any disposition of the matter available to the ~~Referring~~ ~~A~~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~~ 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 ~~Administrative Law Judge~~ Court finds the challenge meritorious, ~~the Administrative Law Judge~~ it may remand the matter to the ~~Referring~~ ~~A~~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 A~~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.

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(2)-(3); 50-13-40(c); 50-13-41(b).

616-1-2-.22 Hearing Procedure

(1) The ~~Administrative Law Judge~~ Court 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~~ 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 ~~Administrative Law Judge~~ 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 ~~Administrative Law Judge~~ Court believes necessary for a full and complete record; ~~and~~

(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 ~~Administrative Law Judge~~ 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 ~~Administrative Law Judge~~ 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 ~~Administrative Law Judge~~ Court is not authorized to resolve constitutional challenges to statutes or rules, the ~~Administrative Law Judge~~ Court may, ~~in the Administrative Law Judge's~~ at its 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~~ 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) ~~Upon application by a party,~~ If any person commits any of the following actions, the ~~Administrative Law Judge shall~~ Court may certify the facts to the superior court of the county ~~in which a party, agent, or employee of a party:~~ 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.

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(1), (6), (b); 50-13-15(1)-(3), (5); 50-13-40(c); 50-13-41(a)(2)-(3).

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 ~~Administrative Law Judge~~ 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, ~~and~~ 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; ~~as well as~~ and

(h) the ~~Initial or Final~~ Decision issued in the matter ~~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 either shall ~~be either stenographically reported verbatim or recorded by electronic means~~ have their audio recorded by electronic means or be stenographically reported verbatim. Upon written request, a copy of the ~~record of any oral proceeding~~ audio recording shall be furnished to any party ~~at the requesting party's expense~~. The Court may charge the requesting party the reasonable cost of producing and delivering the audio recording.

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

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(8); 50-13-40(c).

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

At the conclusion of the hearing, the ~~Administrative Law Judge~~ 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 ~~Administrative Law Judge's~~ Court's discretion.

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

616-1-2-.25 Newly Discovered Evidence

After the close of the hearing record, but p~~P~~rior to the entry of a~~n 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~~ Court determines that the evidence is newly discovered, and that it may materially impact the case, the ~~Administrative Law Judge~~ Court shall hear and receive such evidence in the manner prescribed for the receipt of evidence by these Rules.

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c)**.**

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~~ 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.

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

616-1-2-.27 ~~Initial or Final~~ Decisions

(1) The ~~Administrative Law Judge~~ Court 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.

(2) 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~~ Court 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~~ Court shall enter an order setting forth the earliest practicable date certain for the issuance of the ~~Initial or Final~~ Decision.

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

Statutory Authority O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c); 50-13-41(d).

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

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

(2) The filing of ~~such~~ a motion for reconsideration or rehearing shall not operate as a stay of enforcement of the ~~Initial or Final~~ Decision, unless the ~~Administrative Law Judge~~ 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 ~~Administrative Law Judge~~ 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).

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

616-1-2-.29 Remands

(1) The ~~Administrative Law Judge~~ Court, ~~either on the Administrative Law Judge's own motion or at the motion of any party~~ at its discretion or upon motion of a party, may remand any ~~matter~~ pending case to the ~~Referring~~ agency ~~at any time~~.

(2) In exercising discretion relating to the remand of a ~~matter~~ pending case, the ~~Administrative Law Judge~~ Court shall consider~~, among other things,~~

(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 ~~Referring~~ agency whose ~~activity~~ action is being reviewed; and

(c) the need for the peculiar expertise and experience of the ~~Referring~~ agency in ~~insuring~~ ensuring 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.~~

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

616-1-2-.30 Default

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

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

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

(c) ~~a party that~~ fails to file any required pleading; or

(d) ~~a party that~~ fails to comply with an order issued by the ~~Administrative Law Judge~~ Court.

~~Any~~ The default ~~order~~ judgment shall specify the grounds for the ~~order~~ default.

(2) A~~ny~~ default ~~order~~ 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 ~~order~~ judgment, the ~~Administrative Law Judge~~ Court 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~~ 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.

~~(3)~~(4) Within ten (10) calendar days of the entry of a default ~~order~~ judgment, the party against whom the default ~~order~~ judgment was issued may file a written motion requesting that the ~~order~~ 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 ~~Administrative Law Judge~~ 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.

~~(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.~~

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

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 ~~Administrative Law Judge~~ Court 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~~ Court ~~shall~~ may require ~~such~~ the filing of pleadings and shall conduct the hearing in such manner as justice requires.

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

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

(1) A~~n 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) A~~n Administrative Law~~ Judge shall be recused in any proceeding in which his or her ~~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~~ relevant to the proceeding;

(b) the ~~Administrative Law~~ Judge served as a lawyer in the ~~matter in controversy~~ case; ~~or~~

(c) a lawyer with whom the ~~Administrative Law~~ Judge previously practiced law served as a lawyer ~~concerning the matter~~ in the case during such association; ~~or~~

(d) the ~~Administrative Law~~ Judge ~~has been~~ was a material witness ~~concerning the matter~~ in the case; or

~~(c)~~(e) the ~~Administrative Law~~ Judge, the ~~spouse of the Administrative Law~~ 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 ~~family of the Administrative Law~~ Judge's family residing in the Judge's household

1. is a party to the proceeding; ~~or~~

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 ~~Administrative Law~~ Judge to have more than a trivial interest that could be substantially affected by the proceeding; or

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

(3) A~~n 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 Judge's spouse and minor children residing in the Judge's household ~~of the Adminstrative Law Judge~~.

(4) A~~n 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 parties' agreement to waive disqualification shall be incorporated into the hearing record.

(5) A~~ny~~ party shall move for the disqualification of a~~n 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.

(7) 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.

(8) 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 from presiding over the pending case.

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

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

~~Following the entry of an Initial Decision,~~ The ~~Clerk~~ Court shall ~~compile and certify~~ make the record of the ~~hearing~~ case, including the ~~Initial~~ Decision and any ~~tapes or other~~ recordings of the hearing which have not been transcribed, available and/or accessible to the ~~Referring agency~~parties. ~~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.~~

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

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

(1) ***Bar Membership.*** Except as authorized in paragraphs ~~(2)~~ (3) and (4) of this Rule, or where authorized by law, no person shall represent any party in a proceeding before ~~an Administrative Law Judge~~ the Court unless the person is an active member in good standing of the State Bar of Georgia ~~and~~

(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 ~~in the attorney's individual name~~ 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.

~~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.~~

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

~~(b)~~(4) ***Representation of Business Organizations.*** In the ~~Administrative Law Judge's~~ Court'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~~ the Court.

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

~~(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.~~

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

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. ~~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~~ A party's decision to move for dismissal shall not ~~waive its~~ 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 ~~T~~the ~~Administrative Law Judge~~ Court may decline to render a~~n Initial or Final~~ Decision until after the close of all the evidence.

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

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

(1) The ~~Office of State Administrative Hearings~~ Court has established a~~n Alternative Dispute Resolution~~ mediation process to provide a speedy~~,~~ and 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.

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

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

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).

~~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).~~

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

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

616-1-2-.38 Discovery

Discovery shall not be ~~available in any proceeding before an Administrative Law Judge except to the extent specifically~~ permitted except as 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.~~

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

616-1-2-.39 Agency Review; Judicial Review

(1) ***Agency Review.***

(a) A party seeking agency review of a Decision shall file a copy of the petition with the Administrative Court simultaneously with the service of the petition upon the agency.

(b) Upon receipt of a copy of the petition for agency review, the Administrative Court shall file the official record as compiled by Clerk with the reviewing agency.

(2) ***Judicial Review.***

~~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.~~

(a) A party seeking judicial review of a Decision shall file a copy of the petition, complete with Civil Action number, with the Administrative Court.

(b) Upon receipt of a copy of the petition for judicial review, the Administrative Court shall file the official record as compiled by the Clerk with the reviewing court.

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

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

(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, which shall contain:

~~A petition for hearing on civil penalties shall contain:~~

(a) a statement of the legal authority and jurisdiction under which ~~a hearing is requested~~ 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)~~(~~3~~) ~~Upon filing the petition, the Clerk shall issue~~ The petition shall be accompanied by a summons directed to each person from whom civil penalties are sought ~~and~~, 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 agency 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 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.

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

616-1-2-.41 Continuances; Conflicts

(1) ***Continuances.*** 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.

(a) In determining whether to grant a motion for continuance, the ~~Administrative Law Judge~~ 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 calendar of Administrative Law Judge~~ 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 ~~filed~~ shall not be considered a motion for a continuance ~~unless the notice expressly requests 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 ~~Office of State Administrative Hearings~~ 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.

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

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

~~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.~~

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.

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

616-1-2-.44 Powers of an Administrative Law Judge. ~~Adopted.~~

(1) ~~An Administrative Law Judge~~ 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) ~~In addition, an Administrative Law Judge~~ The Court shall have the power to impose civil penalties for

(a) failing to obey any lawful process or order of the ~~Administrative Law Judge~~ Court or any rule or regulation promulgated by the ~~Office of State Administrative Hearings~~ Court; ~~for~~

(b) ~~failure~~ failing to comply with subpoenas; ~~for~~

(c) any indecorous or improper conduct committed in the presence of the ~~Administrative Law~~ Judge; or ~~for~~

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

(3) ~~An Administrative Law Judge~~ The Court 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.

(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.

Statutory Authority O.C.G.A. Secs. 50-13-40 and 50-13-41. **History. Adopted:** F. Feb. 8, 2019; eff. Feb. 28, 2019

ATTACHMENT 3

616-1-1-.01 Organization

(1) ***Administrative Court.*** The Office of State Administrative Hearings shall also be known as the "Administrative Court" or "Court," which shall be comprised of the Chief State Administrative Law Judge, Assistant Administrative Law Judges, and other personnel.

(2) ***Jurisdiction.*** The Court has jurisdiction over the adjudication of contested cases pursuant to O.C.G.A. §§ 50-13-2(2), -41, and -42. Other agencies may contract with the Court for adjudication services.

(3) ***Chief State Administrative Law Judge (Chief Judge).***

(a) The Court shall be administered by the Chief Judge. The Chief Judge is appointed by the Governor for a term of six (6) years, is eligible for reappointment, and may be removed by the Governor for cause.

(b) The Chief Judge is the chief presiding and administrative officer of the Court and is authorized to appoint Judges and support personnel and promulgate rules of practice and procedure before the Court.

(4) ***Administrative Law Judges.*** The Chief Judge may appoint full-time and part-time Assistant Administrative Law Judges. Each Judge of the Court is appointed by the Chief Judge and shall exercise the powers conferred upon the Chief Judge in all contested cases assigned to them. Each Judge shall have been admitted to the practice of law in this state for a period of at least seven years and shall be in the unclassified service.

(5) ***Special Assistant Administrative Law Judges.*** The Chief Judge may appoint Special Assistant Administrative Law Judges on a temporary or case-by-case basis as may be necessary for the proper performance of the duties of the Court, pursuant to a fee schedule established in advance by the Chief Judge.

(6) ***Other Personnel.*** The Chief Judge may appoint other personnel, which may include, but not be limited to, the following:

(a) a Deputy Chief Judge, who assists the Chief Judge in managing the Court;

(b) an Executive Assistant to the Chief Judge, who is responsible for assisting the Chief Judge with administrative tasks;

(c) Clerks, who are responsible for recordkeeping and receiving and filing case-initiating documents; and

(d) Case management assistants, who are responsible for assisting their assigned judges with administrative tasks and providing information to and receiving submissions from the public.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

616-1-1-.02 Requesting Information from or Making Submissions to the Court

(1) ***General.*** General information about the Court's operations may be obtained from the Executive Assistant to the Chief Judge.

(2) ***Rulemaking.*** Requests for information or submissions concerning public participation in rulemaking pursuant to Rule 03 may be directed to the Executive Assistant to the Chief Judge.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

616-1-1-.03 Rulemaking Procedures

(1) ***Submission.*** To petition for the promulgation, amendment, or repeal of a rule, a written petition shall be submitted to the Chief Judge.

(2) ***Contents.*** The petition shall state fully

(a) the rule involved;

(b) the reason for the desired change;

(c) the parties that will or can be affected by the petitioned change; and

(d) any additional facts known to the petitioner that might influence the decision of the Chief Judge to initiate rulemaking.

Statutory Authority

O.C.G.A. Sec. 50-13-9; 50-13-40(c).

616-1-1-.04 Declaratory Rulings

(1) ***Requirements.*** A declaratory ruling must affect a specific fact situation and specific parties, including the person requesting the ruling. The Chief Judge shall not issue a declaratory ruling on an issue in a matter pending before a Judge or on a hypothetical fact situation.

(2) ***Petition for Declaratory Ruling.***

(a) To petition for a declaratory ruling as to the applicability of a statute or rule, a petitioner shall submit a written petition to the Chief Judge. The petition shall state all of the facts, including the names of those parties involved in the fact situation, and shall include a statement of the legal issue to be resolved.

(b) The petitioner shall serve a copy of the petition on all persons involved in the fact situation by personal delivery or first class mail, and shall attach to the petition a certificate or acknowledgment of service.

(c) Any person may seek to participate in a declaratory ruling proceeding in the matter and under the standards provided by O.C.G.A. § 50-13-14.

Statutory Authority

O.C.G.A. Sec. 50-13-11; 50-13-40(c).

616-1-1-.05 Continuing Judicial Education

(1) The minimum continuing judicial education requirement for a Judge is as follows:

(a) A Judge shall obtain twelve (12) hours of credit annually for instruction from an approved continuing judicial or legal education program.

(b) A Judge who earns more than twelve (12) hours of credit in a year may, with express approval of the Chief Judge, apply the excess credit to the requirement for the succeeding year.

(c) Of the twelve (12) hours of credit obtained each year, at least one (1) hour of credit shall relate to the Code of Judicial Conduct.

(d) The Chief Judge may exempt a Judge from the continuing judicial education requirement upon a finding of undue hardship. To obtain an exemption, a Judge shall file a request for exemption with the Chief Judge no later than the first day of December for the year the exemption is sought.

(2) A Judge may receive credit by participating in Continuing Judicial Education programs of the Court. A Judge who seeks credit for attending programs listed in subparagraphs (a) through (e) shall provide to the Chief Judge in advance of attendance a description of the program for which credit is sought. A Judge may receive credit by participating in one or more of the following:

(a) programs sponsored by the Institute of Continuing Legal Education accredited by the State Bar of Georgia's Commission on Continuing Lawyer Competency;

(b) programs sponsored by the Institute of Continuing Judicial Education;

(c) courses sponsored by the National Judicial College or any American Bar Association accredited law school, whether for credit or not;

(d) programs sponsored by the National Association of the Administrative Law Judiciary and its affiliates; or

(e) other education programs approved in advance of attendance by the Chief Judge.

(3) A Judge shall receive one (1) hour of credit for each hour of attendance in a program listed in paragraph (2), three (3) hours of credit for each hour of teaching in such a program, six (6) hours of credit for each hour of instruction when a handout is prepared and distributed, and two (2) hours of credit for each hour as a panelist.

(4) A Judge shall file a compliance report with the Chief Judge no later than the end of the second week in December of the year for which the report is submitted.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

616-1-1-.06 Code of Judicial Conduct

The Georgia Code of Judicial Conduct shall apply to all Judges of the Administrative Court.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

616-1-1-.07 Oath of Office

Judges of the Administrative Court shall take the oath prescribed for judges of the Georgia superior courts.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

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 the Office of State Administrative Hearings 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) "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).

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

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 may be resolved at the Court's discretion by applying the CPA or the Uniform Rules for the Superior Courts of Georgia.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c); 50-13-41.

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;

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 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.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c); 50-13-41.

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13; 50-13-40(c); 50-13-41.

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.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c); 50-13-41.

616-1-2-.06 Reserved.

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 or public assistance benefit 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) 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.

Statutory Authority

O.C.G.A. Sec. 50-13-13; 50-13-40(c); 50-13-41.

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13; 50-13-40(c); 50-13-41.

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13; 50-13-40(c); 50-13-41.

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.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c); 50-13-41.

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.

Statutory Authority

O.C.G.A. Sec. 50-13-40(c).

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-14; 50-13-40(c).

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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 judgment 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, or that the moving party is not entitled to judgment 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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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

(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.

(3) ***Agency Rescission.*** An agency may move to rescind the adverse action underlying the contested case, whereupon if the motion is granted, the Court shall enter an order of dismissal with prejudice or without prejudice.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(4); 50-13-40(c).

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. 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.

Statutory Authority

O.C.G.A. Sec. 50-13-15; 50-13-40(c).

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 in accordance with Rule 11; 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 person, 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 and served upon the person having possession, custody, or control of the documents or objects;

4. served in accordance with Rule 11; 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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(7), (b); 50-13-40(c); 50-13-41(a)(2)-(3).

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(2)-(3); 50-13-40(c); 50-13-41(b)

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(1), (6), (b); 50-13-15(1)-(3), (5); 50-13-40(c); 50-13-41(a)(2)-(3).

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 audio recording shall be furnished to any party. The Court may charge the requesting party the reasonable cost of producing and delivering the audio recording.

(3) All documentary and physical evidence shall be retained by the Court unless transmitted to the agency pursuant to Rule 33.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(8); 50-13-40(c).

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c).

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 the Reviewing Agency shall be a Final Decision. "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.

Statutory Authority

O.C.G.A. Sec. 50-13-13(a)(6); 50-13-40(c); 50-13-41(d).

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).

Statutory Authority

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

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.

Statutory Authority

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

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.

Statutory Authority

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

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 the filing of pleadings and shall conduct the hearing in such manner as justice requires.

Statutory Authority

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

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.

Statutory Authority

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

616-1-2-.33 Access to Records

The Court shall make the record of the case, including the Decision and any recordings of the hearing which have not been transcribed, available and/or accessible to the parties.

Statutory Authority

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

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.

Statutory Authority

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

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 Decision until after the close of all the evidence.

Statutory Authority

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

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.

Statutory Authority

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

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.

Statutory Authority

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

616-1-2-.38 Discovery

Discovery shall not be permitted except as authorized by law.

Statutory Authority

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

616-1-2-.39 Agency Review; Judicial Review

(1) ***Agency Review.***

(a) A party seeking agency review of a Decision shall file a copy of the petition with the Administrative Court simultaneously with the service of the petition upon the agency.

(b) Upon receipt of a copy of the petition for agency review, the Administrative Court shall file the official record as compiled by Clerk with the reviewing agency.

(2) ***Judicial Review.***

(a) A party seeking judicial review of a Decision shall file a copy of the petition, complete with Civil Action number, with the Administrative Court.

(b) Upon receipt of a copy of the petition for judicial review, the Administrative Court shall file the official record as compiled by the Clerk with the reviewing court.

Statutory Authority

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

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 agency 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.

Statutory Authority

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

616-1-2-.41 Continuances; Conflicts

(1) ***Continuances.*** 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.

(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.

Statutory Authority

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

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.

Statutory Authority

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

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.

Statutory Authority

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

616-1-2-.44 Powers of an 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.

Statutory Authority

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