

**OFFICE OF STATE ADMINISTRATIVE HEARINGS**

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

**CHAPTER 616-1-2**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that, pursuant to the authority set forth below, the Chief Judge of the Office of State Administrative Hearings proposes to promulgate one (1) new rule—Ga. Comp. R. & Regs. 616-1-2-.06—and amend six (6) additional rules—Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.15, -.27, -.33, and -.39—in Chapter 616-1-2 of the Rules and Regulations of the Office of State Administrative Hearings (OSAH).

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](http://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: MAY 4, 2022**  
**TIME: 2:00 P.M.**  
**LOCATION: THE OFFICE OF STATE ADMINISTRATIVE HEARINGS**  
**COURTROOM 3**  
**225 PEACHTREE ST. NE, SUITE 400**  
**ATLANTA, GA 30303**

The proposed rule changes will be considered for adoption on May 11, 2022, 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 May 11, 2022, with an effective date of June 1, 2022. To ask questions or submit data, views, or arguments orally or in writing, please contact Renata Bareza at telephone number (404) 651-7595 or email address [rbareza@osah.ga.gov](mailto:rbareza@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 4<sup>th</sup> day of April, 2022.

  
\_\_\_\_\_  
**MICHAEL MALIHI**  
**Chief Judge**

**SYNOPSIS OF PROPOSED REVISIONS TO THE RULES OF THE OFFICE OF STATE ADMINISTRATIVE HEARINGS, Chapter 616-1-2****(1) Rule 616-1-2-.04**

Purpose: To reference the rule governing electronic filing via the Court's electronic filing system.

Main feature: Subsection (2)(b) will be amended to reference the electronic filing procedure prescribed in proposed Rule 6.

**(2) Rule 616-1-2-.06**

Purpose: To implement and regulate electronic filing via the Court's electronic filing system.

Main feature: This new rule will prescribe the procedure by which parties may submit electronic filings via the electronic filing system maintained by the Court. The rule will also prohibit documents under seal or presented to the Court for *in camera* review from being filed via the electronic filing system; reference the electronic service requirements set forth in amended Rule 11; describe contingencies for system outages; establish a clerical review system for electronically filed documents; and provide that electronic filings have the same force and effect and are subject to the same right of public access as documents filed by traditional means.

**(3) Rule 616-1-2-.11**

Purpose: To delineate the procedure and effect of electronic service via the Court's electronic filing system and incorporate Code Section 50-13-41(a)(5), which provides that the Court may serve any party electronically.

Main feature: The rule will be amended to provide that filing a document via the Court's electronic filing system shall effect service on all persons who have opted to receive service through the electronic filing system in the case. The proposed rule shall provide that persons may opt to receive electronic service and rescind such election. Upon failure of the electronic system, the filer will remain responsible for ensuring parties are served by other means, but the Court will have discretion to enter appropriate relief upon a showing of providential cause. Finally, the proposed rule will implement Code Section 50-13-41(a)(5), which gives the Court the ability to serve any party electronically except where contrary to law.

**(4) Rule 616-1-2-.15**

Purpose: To clarify the requirements for a response to summary determination and correct grammatical error.

Main feature: Proposed subsection (2)(c) shall clarify that the party responding to a motion for summary determination must show that there is a genuine issue of material fact for determination or that the moving party is not entitled to prevail as a matter of law. The proposed amendment also corrects a grammatical error in subsection (5)(b).

**(5) Rule 616-1-2-.27**

Purpose: To update the definition of “Reviewing Agency.”

Main feature: Section (5) shall be amended to include a reference to Code Section 50-13-41(d)(1), thereby incorporating statutory updates to the definition of Reviewing Agency.

**(6) Rule 616-1-2-.33**

Purpose: To update the procedure governing release of the administrative record.

Main feature: Pursuant to Code Section 50-13-41(a)(6), the rule will be amended to eliminate the practice of automatically transferring the record to the Referring Agency upon closure of a case, which was designed with physical files in mind, and instead provide that certified electronic copies will be sent to parties upon request.

**(7) Rule 616-1-2-.39**

Purpose: To update the procedure for submitting records for agency and judicial review.

Main feature: The rule shall clarify that, upon receipt of an application for agency review or petition for judicial review, the Office of State Administrative Hearings shall be responsible for compiling, certifying, and transmitting the administrative record to the Reviewing Agency or court.

**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. Documents may also be filed via the Court's electronic filing system pursuant to Rule 6.
- (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; 50-13-41.

**616-1-2-.06 Repealed and Number Reserved Electronic Filing via the Court's Electronic Filing System**

- (1) *Availability.* Electronic filing may be available for certain classes of cases via the Court's electronic filing system. Where available, a document may be filed using this system, unless such filing is expressly prohibited by law, these Rules, or by court order.
- (2) *Sealed documents and in camera review.* Filing via the Court's electronic filing system is expressly prohibited for documents that, according to law or by court order, must be filed under seal or are being presented to the Court for *in camera* review.
- (3) *Service.* Documents filed via the Court's electronic filing system shall comply with the service requirements in Rule 11.
- (4) *System outage or errors.* If electronic filing is prevented or delayed because of a failure of the electronic filing system, the filer remains responsible for filing in a timely matter by another means outlined in Rule 4(2)(b). The Court also has discretion, upon a showing of providential cause, to enter appropriate relief such as the allowance of filings *nunc pro tunc* or the provision of extensions to respond.
- (5) *Misfiled or otherwise deficient or defective filings.* Upon filing of a document via the Court's electronic filing system, a Court staff member shall review the document before formally accepting it into the case file. If Court staff determine the document was misfiled or is otherwise deficient or defective, the document shall not be added to the case file, and the filer shall receive notice of its rejection. The filer shall retain opportunity to cure and refile a rejected document. The Court shall retain a record of accepted and rejected documents, including date, time, and reason for rejection. Such records shall be maintained until a case is finally concluded including the exhaustion of all appeals. Absent a court order to the contrary, or where prohibited by law, such records shall be accessible to the parties and public upon request without the necessity for a subpoena.
- (6) *Force and effect.* Electronically filed court records have the same force and effect and are subject to the same right of public access as are documents filed by traditional means.

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, or electronic service via the Court's electronic filing system.
  - (a) **First class mail.** Service by first class mail shall be complete upon mailing, with proper postage attached.
  - (b) **Electronic service via the Court's electronic filing system.**
    - (i) Electronic service via the Court's electronic filing system may be made available for certain classes of contested cases.
    - (ii) Upon filing a document with the Court's electronic filing system, that document is deemed served on all persons who have opted to receive service through the electronic filing system for that contested case. All other persons must be served by alternative means.
    - (iii) A person may opt to receive electronic service in a contested case by making this selection within the Court's electronic filing system. That election may be rescinded at any time.
    - (iv) If electronic service is prevented or delayed because of a failure of the electronic filing system, the filer remains responsible for serving parties in a timely matter by another means outlined in this Rule.
- (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, email address, and telephone number of each party's attorney, or each party's duly authorized representative.
- (6) **Electronic Service by the Court.** Except where specified means of service are required by law, the Court may serve any party electronically, which includes but is not limited to service by email or by any electronic filing system utilized by the Court.

Statutory Authority

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

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

- (1) **Motion.** A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated, on the basis that there is no genuine issue of material fact for determination and the moving party is entitled to prevail as a matter of law.
  - (a) There shall be included in the motion or attached thereto a separate, concise, and numbered statement of each of the material facts as to which the moving party contends there is no genuine issue for determination. Each numbered material fact must be supported by a citation to evidence proving such fact. The Court will not consider any fact that
    1. lacks citation to supporting evidence;
    2. is stated as an issue or legal conclusion; or
    3. is set out only in a brief and not in the moving party's statement of undisputed facts.
  - (b) A motion for summary determination must be filed and served on all parties no later than thirty (30) calendar days before the date set for hearing. For good cause shown, a motion may be filed at any time before the close of the hearing.
- (2) **Response.** A party may file and serve a response to a motion for summary determination or a counter-motion for summary determination within twenty (20) calendar days of service of the motion for summary determination.
  - (a) The response shall include a separate and concise statement of each of the material facts as to which the party opposing summary determination contends there exists a genuine issue for determination. These facts shall be individually numbered to correspond to the numbered statement of material facts provided by the moving party. Each fact must be supported by a citation to evidence. The Court will not consider any fact that
    1. lacks citation to supporting evidence;
    2. is stated as an issue or legal conclusion; or
    3. is set out only in a brief and not in the responding party's statement of material facts.
  - (b) The Court may deem each of the moving party's facts as admitted unless the responding party
    1. directly refutes the moving party's fact with a response supported by a citation to evidence, as required in subsection (2)(a) of this Rule;
    2. states a valid objection to the admissibility of the moving party's fact;



3. asserts that the moving party's citation does not support the moving party's fact; or
  4. asserts that the moving party's fact is not material or otherwise has failed to comply with this Rule.
- (c) When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence as required in subsection (2)(a) of this Rule, that there is a genuine issue of material fact for determination, ~~and~~ or that the moving party is not entitled to prevail as a matter of law.
- (3) ***Affidavits.*** Affidavits shall be made upon personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all documents to which reference is made in an affidavit shall be attached thereto and served therewith. Where facts necessary for summary determination are a matter of expert opinion, such facts may be resolved on the basis of uncontroverted affidavits or testimony of expert opinion.
- (4) ***Oral Argument and Written Submissions.*** The Court may set the motion for oral argument and call for the submission of proposed findings of fact, conclusions of law, and briefs.
- (5) ***Ruling.*** The Court shall rule on a motion for summary determination in writing.
- (a) If the period required to rule upon the motion for summary determination will extend beyond the date set for the hearing, the Court may continue the hearing.
  - (b) The Court, at its discretion, may determine that the matter, as a whole, or certain specified issues, are better resolved by an evidentiary hearing and ~~is~~ inappropriate for summary determination.

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 a Reviewing Agency shall be a Final Decision.
- (4) Every Decision entered by the Court that is reviewable by a Reviewing Agency shall be an Initial Decision.
- (5) "Reviewing Agency" means the ultimate decision maker in a contested case that is a constitutional board or commission; an elected constitutional officer in the executive branch of this state; any professional licensing board, as that term is defined in O.C.G.A. § 43-1-1(3), if the members thereof are appointed by the Governor; ~~or the Department of Human Services in a contested case where such department is required to be the ultimate decision maker by federal law or regulations governing titles IV-B and IV-E of the federal Social Security Act~~ or as otherwise provided by O.C.G.A § 50-13-41(d)(1).

## Statutory Authority

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

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

Following the entry of an Initial Decision, as defined in Rule 27, the ~~The~~ Clerk shall make available or transfer certified electronic copies of the hearing record to the parties upon request. compile and certify the record of the hearing, including the Initial Decision and any tapes or other recordings of the hearing which have not been transcribed, to the Referring Agency. Unless the record has been certified to a reviewing court pursuant to Rule 39, sixty (60) days following the entry of a Final Decision, as defined in Rule 27, the Clerk shall compile and certify the record of the hearing, including the Final Decision and any tapes or other recordings of the hearing which have not been transcribed, to the Referring Agency.

Statutory Authority

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

**616-1-2-.39 Judicial Review of Decisions**

~~Pursuant to the APA, a copy of any petition for judicial review of a Final Decision, as defined in Rule 27, shall be filed with the Court by the party seeking judicial review simultaneously with the service of the petition upon the Referring Agency.~~

- (1) *Agency Review of Initial Decisions.* Upon receipt of a copy of an application for agency review, the Clerk shall compile and certify the record of the hearing and transmit it to the Reviewing Agency, as defined in Rule 27, and any other parties of record in the case.
- (2) *Judicial Review of Final Decisions.* Upon receipt of a copy of a petition for judicial review, the Clerk shall compile and certify the record of the hearing~~The Referring Agency shall submit the hearing record as compiled and certified by the Clerk~~ and transmit it to the reviewing court. The Clerk also shall provide an electronic copy of this certified record to all parties of record in the case.

Statutory Authority

O.C.G.A. Sec. 50-13-40; 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, fax, or email attachment. Documents may also be filed via the Court's electronic filing system pursuant to Rule 6.
- (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; 50-13-41

**616-1-2-.06 Electronic Filing via the Court's Electronic Filing System**

- (1) **Availability.** Electronic filing may be available for certain classes of cases via the Court's electronic filing system. Where available, a document may be filed using this system, unless such filing is expressly prohibited by law, these Rules, or by court order.
- (2) **Sealed documents and in camera review.** Filing via the Court's electronic filing system is expressly prohibited for documents that, according to law or by court order, must be filed under seal or are being presented to the Court for *in camera* review.
- (3) **Service.** Documents filed via the Court's electronic filing system shall comply with the service requirements in Rule 11.
- (4) **System outage or errors.** If electronic filing is prevented or delayed because of a failure of the electronic filing system, the filer remains responsible for filing in a timely matter by another means outlined in Rule 4(2)(b). The Court also has discretion, upon a showing of providential cause, to enter appropriate relief such as the allowance of filings *nunc pro tunc* or the provision of extensions to respond.
- (5) **Misfiled or otherwise deficient or defective filings.** Upon filing of a document via the Court's electronic filing system, a Court staff member shall review the document before formally accepting it into the case file. If Court staff determine the document was misfiled or is otherwise deficient or defective, the document shall not be added to the case file, and the filer shall receive notice of its rejection. The filer shall retain opportunity to cure and refile a rejected document. The Court shall retain a record of accepted and rejected documents, including date, time, and reason for rejection. Such records shall be maintained until a case is finally concluded including the exhaustion of all appeals. Absent a court order to the contrary, or where prohibited by law, such records shall be accessible to the parties and public upon request without the necessity for a subpoena.
- (6) **Force and effect.** Electronically filed court records have the same force and effect and are subject to the same right of public access as are documents filed by traditional means.

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, personal delivery, or electronic service via the Court's electronic filing system.
  - (a) ***First class mail.*** Service by first class mail shall be complete upon mailing, with proper postage attached.
  - (b) ***Electronic service via the Court's electronic filing system.***
    - (i) Electronic service via the Court's electronic filing system may be made available for certain classes of contested cases.
    - (ii) Upon filing a document with the Court's electronic filing system, that document is deemed served on all persons who have opted to receive service through the electronic filing system for that contested case. All other persons must be served by alternative means.
    - (iii) A person may opt to receive electronic service in a contested case by making this selection within the Court's electronic filing system. That election may be rescinded at any time.
    - (iv) If electronic service is prevented or delayed because of a failure of the electronic filing system, the filer remains responsible for serving parties in a timely matter by another means outlined in this Rule.
- (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, email address, and telephone number of each party's attorney, or each party's duly authorized representative.
- (6) ***Electronic Service by the Court.*** Except where specified means of service are required by law, the Court may serve any party electronically, which includes but is not limited to service by email or by any electronic filing system utilized by the Court.

Statutory Authority

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



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

- (1) **Motion.** A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated, on the basis that there is no genuine issue of material fact for determination and the moving party is entitled to prevail as a matter of law.
  - (a) There shall be included in the motion or attached thereto a separate, concise, and numbered statement of each of the material facts as to which the moving party contends there is no genuine issue for determination. Each numbered material fact must be supported by a citation to evidence proving such fact. The Court will not consider any fact that
    1. lacks citation to supporting evidence;
    2. is stated as an issue or legal conclusion; or
    3. is set out only in a brief and not in the moving party's statement of undisputed facts.
  - (b) A motion for summary determination must be filed and served on all parties no later than thirty (30) calendar days before the date set for hearing. For good cause shown, a motion may be filed at any time before the close of the hearing.
- (2) **Response.** A party may file and serve a response to a motion for summary determination or a counter-motion for summary determination within twenty (20) calendar days of service of the motion for summary determination.
  - (a) The response shall include a separate and concise statement of each of the material facts as to which the party opposing summary determination contends there exists a genuine issue for determination. These facts shall be individually numbered to correspond to the numbered statement of material facts provided by the moving party. Each fact must be supported by a citation to evidence. The Court will not consider any fact that
    1. lacks citation to supporting evidence;
    2. is stated as an issue or legal conclusion; or
    3. is set out only in a brief and not in the responding party's statement of material facts.
  - (b) The Court may deem each of the moving party's facts as admitted unless the responding party
    1. directly refutes the moving party's fact with a response supported by a citation to evidence, as required in subsection (2)(a) of this Rule;
    2. states a valid objection to the admissibility of the moving party's fact;

3. asserts that the moving party's citation does not support the moving party's fact; or
  4. asserts that the moving party's fact is not material or otherwise has failed to comply with this Rule.
- (c) When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence as required in subsection (2)(a) of this Rule, that there is a genuine issue of material fact for determination, or that the moving party is not entitled to prevail as a matter of law.
- (3) ***Affidavits.*** Affidavits shall be made upon personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all documents to which reference is made in an affidavit shall be attached thereto and served therewith. Where facts necessary for summary determination are a matter of expert opinion, such facts may be resolved on the basis of uncontroverted affidavits or testimony of expert opinion.
- (4) ***Oral Argument and Written Submissions.*** The Court may set the motion for oral argument and call for the submission of proposed findings of fact, conclusions of law, and briefs.
- (5) ***Ruling.*** The Court shall rule on a motion for summary determination in writing.
- (a) If the period required to rule upon the motion for summary determination will extend beyond the date set for the hearing, the Court may continue the hearing.
  - (b) The Court, at its discretion, may determine that the matter, as a whole, or certain specified issues, are better resolved by an evidentiary hearing and inappropriate for summary determination.

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 a Reviewing Agency shall be a Final Decision.
- (4) Every Decision entered by the Court that is reviewable by a Reviewing Agency shall be an Initial Decision.
- (5) "Reviewing Agency" means the ultimate decision maker in a contested case that is a constitutional board or commission; an elected constitutional officer in the executive branch of this state; a 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 as otherwise provided by O.C.G.A § 50-13-41(d)(1).

**Statutory Authority**

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

**616-1-2-.33 Availability of the Record**

The Clerk shall make available or transfer certified electronic copies of the hearing record to the parties upon request.

Statutory Authority

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

**616-1-2-.39 Review of Decisions**

- (1) ***Agency Review of Initial Decisions.*** Upon receipt of a copy of an application for agency review, the Clerk shall compile and certify the record of the hearing and transmit it to the Reviewing Agency, as defined in Rule 27, and any other parties of record in the case.
- (2) ***Judicial Review of Final Decisions.*** Upon receipt of a copy of a petition for judicial review, the Clerk shall compile and certify the record of the hearing and transmit it to the reviewing court. The Clerk also shall provide an electronic copy of this certified record to all parties of record in the case.

Statutory Authority

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