

**RULES
OF
THE GEORGIA COMMISSIONER OF SECURITIES**

**CHAPTER 590-4-6
RULES GOVERNING ADMINISTRATIVE HEARINGS**

TABLE OF CONTENTS

590-4-6-.01	Applicability and Scope of Rules.
590-4-6-.02	Filing and Submission of Documents.
590-4-6-.03	Computation of Time.
590-4-6-.04	Changes of Time.
590-4-6-.05	Burden of Proof; Admissibility of Copies of Records.
590-4-6-.06	Amendments to Pleadings.
590-4-6-.07	Notice of Hearing.
590-4-6-.08	Ex Parte Communications.
590-4-6-.09	Service.
590-4-6-.10	Consolidation and Severance.
590-4-6-.11	Substitution of Parties; Intervention.
590-4-6-.12	Prehearing Conferences.
590-4-6-.13	Summary Determination.
590-4-6-.14	Motions.
590-4-6-.15	Withdrawal of Request for Hearing; Settlement.
590-4-6-.16	Evidence; Official Notice.
590-4-6-.17	Subpoenas and Notices to Produce.
590-4-6-.18	Depositions and Written Questions to Secure Testimony.
590-4-6-.19	Nature of Proceedings.
590-4-6-.20	Hearing Procedure.
590-4-6-.21	Record of Hearings.
590-4-6-.22	Proposed Findings of Fact, Conclusions of Law, and Briefs.
590-4-6-.23	Newly Discovered Evidence.
590-4-6-.24	Closure of Hearing Record.
590-4-6-.25	Final Order of the Hearing Officer.
590-4-6-.26	Motions for Reconsideration or Rehearing; Stay of Decision.
590-4-6-.27	Default.
590-4-6-.28	Expedited Proceedings.
590-4-6-.29	Appearance by Attorneys; Signing of Pleadings; Appearance Pro-Se.
590-4-6-.30	Involuntary Dismissal.
590-4-6-.31	Discovery.
590-4-6-.32	Continuances and Conflicts.
590-4-6-.33	Withdrawals and Leaves of Absence.

590-4-6-.01 Applicability and Scope of Rules.

(1) The Rules of this Chapter 590-4-6 shall govern all hearings arising under the Act.

(2) All hearings will be conducted before the Commissioner, the Assistant Commissioner, a referee appointed by the Commissioner, or an Administrative Law Judge designated by the Office of State Administrative Hearings. Hearings held by an Administrative Law Judge shall be subject to the policies, rules, and procedures of the Office of State Administrative Hearings. For the purposes of these Rules “the Hearing Officer” shall refer to the Commissioner or the Assistant Commissioner of Securities for the State of Georgia, and unless the context requires otherwise, to a referee or an Administrative Law Judge.

(3) The Hearing Officer shall afford a liberal construction of these Rules where respondents in a case are not represented by counsel. Moreover, at the discretion of the Hearing Officer, the procedural requirements of these Rules may be relaxed in appropriate cases where such relaxation will facilitate the resolution of the matter without prejudice to the parties and will not be inconsistent with the requirements of the Georgia Administrative Procedure Act (“APA”) or other applicable statute.

(4) Procedural questions arising at any stage of the proceeding that are not addressed in the APA, any other applicable law, or these Rules shall be resolved at the discretion of the Hearing Officer, as justice requires. The Hearing Officer may consult and utilize the Civil Practice Act, Code Section Title 9, Chapter 11, and the Uniform Rules for the Superior Courts in the exercise of his or her discretion.

(5) In the event any requirement of these Rules conflicts with, or is supplemented by, an applicable state or federal statute or a federal rule governing hearings, the requirement of the conflicting or supplementing state or federal statute or the federal rule shall be applied by the Hearing Officer either on the Hearing Officer’s own initiative or on the written notice or motion of any party.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-13.

590-4-6-.02 Filing and Submission of Documents.

(1) All submissions authorized or required to be filed with the Hearing Officer under the Act and these Rules shall be filed on 8½ by 11 inch paper with the Hearing Officer’s Clerk (“Clerk”). Submissions shall be deemed filed on the date on which they are received by the Clerk, or the official postmark date such document was mailed, properly addressed to the Clerk with postage prepaid, whichever date comes first. At the Hearing Officer’s discretions submissions may also be filed by facsimile, email or other approved electronic means designated by the Hearing Officer.

(2) The office hours of the Clerk shall be 8:00 a.m. to 5:00 p.m., Monday through Friday, except State legal holidays.

(3) All submissions shall be signed by the person making the submission, or by said person's attorney or other authorized agent or representative, and shall state the name, address, telephone number and the representative capacity of the person making the submission. The signature of an attorney or party shall constitute a certification that the signer has read the submission and that it is not interposed for delay or any improper purpose.

(4) All legal authority referred to, or in any way relied upon, in any submission that is 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, Georgia Rules and Regulations or any federal statutes or regulations.

(5) Failure to comply with this Rule, or any other requirement of the Act and these Rules relating to the form or content of submissions to be filed, may result in the exclusion from the record, and the consideration by the Hearing Officer, of the non-complying submission. If, on motion by any party or on the Hearing Officer's own motion, the Hearing Officer determines that a submission fails to meet any filing requirement of the Act or these Rules, the Hearing Officer may direct the Clerk to notify the party that the filing has been rejected and refer to the applicable Rule(s) upon which the rejection is based. A party whose submission has been rejected shall have ten (10) days from the date of objection within which to conform the submission to the applicable Rule(s) and refile the submission.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.03 Computation of Time.

(1) Computation of any period of time referred to in Chapter 6 of these Rules shall begin with the first day following the day on which the act that initiates such period of time occurs. When the last day of the period so computed is a day on which the office of the Hearing Officer's Clerk is closed, the period shall run until the end of the following business day.

(2) Whenever a party has the right, or is required, to do some act or take some action within a prescribed period after the service of notice or other paper, other than process, issued by a court or the Hearing Officer upon the party by another party within a period prescribed by these Rules and not otherwise specified by law, three days shall be added to that prescribed period if the notice or paper is served by mail.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.04 Changes of Time.

For good cause shown, the Hearing Officer may change, either on the Hearing Officer's own motion or on the motion of any party, any time limit prescribed or allowed by these Rules. The Hearing Officer shall notify all parties of any determination to change any time limit.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.05 Burden of Proof; Admissibility of Copies of Records.

(1) The burden of proof in all administrative matters shall be as follows:

(a) In any case involving the imposition of civil penalties, an administrative enforcement order, or the revocation, suspension, amendment, or non-renewal of a registration, the holder of the registration or the person from whom civil penalties are sought, or against whom an order is issued, shall bear the burden as to any affirmative defenses he, she, or it raises;

(b) Any party challenging the issuance, revocation, suspension, amendment, or non-renewal of a registration who is not the registrant shall bear the burden;

(c) Any applicant for a registration that has been denied shall bear the burden. Any registrant that appeals the conditions, requirements, or restrictions placed on a registration shall bear the burden; and

(d) In any case involving the imposition of civil penalties, an administrative enforcement order, or the revocation, suspension, amendment, or non-renewal of a registration, the registrant or the person from whom civil penalties are sought, or against whom an order is issued, shall bear the burden of proving any exemption or exception from a definition.

(e) A person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(f) The Hearing Officer may, on his or her own motion or on motion of any party and by notice to the parties at least three (3) days prior to the hearing where practicable, but in any event before the start of the hearing, determine that the law or justice requires a different placement of the burden of proof.

(2) Copies of any documents filed in the Commissioner's office and of any records kept by the Commissioner, whether such copies are photostatic or electronic imaging, or otherwise, certified by the Commissioner, shall be admissible with the same force and effect as the original of such documents or records would have if they were produced.

(3) A certificate signed and sealed by the Commissioner indicating compliance or noncompliance by a person with the Act shall constitute prima-facie evidence of such compliance or noncompliance with the Act, and shall be admissible.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.06 Amendments to Pleadings.

The Hearing Officer may require or permit any party to file a Charging Document (which may be a Notice of Opportunity for Hearing and Proposed Order or some other document) or an

Answer to a Charging Document. In the event any such pleading is required by the Hearing Officer, any party may amend such a pleading without leave of the Hearing Officer until the tenth (10th) day prior to the date set for hearing on the matter, or until the entry of a prehearing order, whichever occurs first. Thereafter, a party may amend his, her, or its pleadings only by written consent of the adverse party or by leave of the Hearing Officer for good cause shown. If an amendment is made to any pleading to which a response or reply is required, a response or reply to such amendment shall be filed within seven (7) days after service of the amendment, unless otherwise ordered by the Hearing Officer.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.07 Notice of Hearing.

(1) As soon as practicable after the receipt of a request for a hearing, either by the Respondent or the Commissioner's staff ("Staff"), and the filing of any responsive pleading(s), the Hearing Officer shall issue a notice of hearing, which shall include:

- (a) The time, place, and nature of the hearing;
- (b) The legal authority and jurisdiction pursuant to which the hearing was requested;
- (c) The specific laws and rules involved;
- (d) A short and plain statement of the matters asserted;
- (e) The right of parties to subpoena witnesses and documentary evidence, to be represented by legal counsel, and to respond, and present evidence on, all issues involved; and
- (f) The potential consequences of a failure by any Respondent to attend a hearing.

(2) If the Hearing Officer is unable to state the matters in detail on the basis of the pleadings filed, the notice may be limited to a statement of the issues involved. Thereafter, the Hearing Officer may require more detailed pleadings, and, upon the written application of a party, the Hearing Officer shall furnish, or shall require the appropriate party to furnish, a more detailed statement. The notice may incorporate by reference information set forth in the petition, the responsive pleading(s), a prehearing order, or any other material included in the record of the matter at issue.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-13.

590-4-6-.08 Ex Parte Communications.

(1) Commencing with the filing of a request for a hearing, no person shall communicate ex parte with the Hearing Officer relating to the merits of the proceeding without the knowledge and consent of all other parties to the matter until the matter is no longer pending in any administrative or judicial forum; provided that:

(a) Where circumstances require, ex parte communications for scheduling, administrative, or procedural requirements or purposes, or emergencies that do not deal with substantive matters or issues on the merits of the case are authorized; if:

1. The Hearing Officer reasonably believes that no party will gain procedural or tactical advantage as a result of the ex parte communication, and

2. If appropriate under the circumstances, the Hearing Officer makes provision promptly to notify all other parties of the substance of the ex parte communication and allows all other parties an opportunity to respond; and

(b) Ex parte communications shall not include normal and customary contact between the Commissioner and his or her staff not relating to the contested case.

(2) If the Hearing Officer receives a communication prohibited by this Rule, the Hearing Officer shall file with the Clerk any written communication received and a memorandum stating the substance of any oral communication received. The Clerk shall forthwith notify all parties of the receipt of such communication and its availability for inspection.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.09 Service.

(1) A party filing any submission under this Rule shall simultaneously serve a copy of the submission upon each party of record. Service shall be made by mail or personal delivery, or, in the discretion of the Hearing Officer, by facsimile, email or other electronic media. Service by mail shall be complete upon mailing by first class mail, with proper postage affixed, to a party's address of record. Service by electronic means, if permitted, shall be effective upon delivery.

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

(3) The Clerk shall maintain, and upon request furnish to parties of record in a matter, a list containing the name, service address, and telephone number of each other party or his, her, or its attorney or duly authorized representative.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.10 Consolidation and Severance.

(1) In proceedings involving common issues of law or fact, whenever it appears to the Hearing Officer that a joint hearing would serve to expedite or simplify consideration of those issues and that no party would be prejudiced thereby, the Hearing Officer may, upon motion of any party or the Hearing Officer, consolidate such proceedings for hearing on any or all of the common issues in such proceedings.

(2) Whenever the Hearing Officer determines that it would be more conducive to an expeditious, full and fair hearing for any party or issue to be heard in separate proceedings, the Hearing Officer may, upon motion of any party or the Hearing Officer, sever the party or issue for such separate hearing.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.11 Substitution of Parties; Intervention.

(1) The Hearing Officer may, upon motion, permit substitution of parties, as justice requires.

(2) Any person seeking to intervene shall file a motion stating the specific grounds upon which intervention is sought and attaching a pleading setting forth the claim or defense for which intervention is sought. In order to avoid undue delay or prejudice to the adjudication of the rights of the original parties, the Hearing Officer may limit the factual or legal issues that may be raised by an intervenor.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-14.

590-4-6-.12 Prehearing Conferences.

(1) Each person subject to an order issued by the Commissioner under Section 10-5-73 or any other applicable provision of the Act or the subject of a Notice of Proposed Order and Opportunity for Hearing under any provision of the Act, may request a pre-hearing conference with the Commissioner or the Commissioner's staff in lieu of or prior to a hearing as specified in Section 10-5-73(b).

(2) The Commissioner's receipt of a request for a pre-hearing conference will toll, until the date that the pre-hearing conference is scheduled, the running of the time for requesting and setting a hearing as specified in Section 10-5-73(b). In determining the number of days that have run, neither the day on which the request for a pre-hearing conference is received by the Commissioner nor the day on which the conference is scheduled shall be counted.

(3) The pre-hearing conference shall begin with a telephonic or in-person meeting between the Commissioner or the Commissioner's staff and the party requesting the pre-hearing conference. The party requesting the pre-hearing conference may be represented by counsel who may appear at the pre-hearing conference in the requesting party's stead.

(4) The pre-hearing conference may remain open until the matter is resolved or the Commissioner terminates the pre-hearing conference. The Commissioner may terminate the pre-hearing conference by order or written correspondence.

(5) A hearing conducted under any provision of the Georgia Uniform Securities Act of 2008 may be preceded by a pre-hearing conference if the parties so agree.

Authority: O.C.G.A. Secs. 10-5-71, 10-5-73, and 10-5-74.

590-4-6-.13 Summary Determination.

(1) Any party may move, based on supporting affidavits or other probative evidence, for a summary determination in its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. There shall be included in such motion, or annexed thereto, a short and concise statement of each of the material facts as to which the moving party contends there is no genuine issue for determination. Such a motion must be filed and served on all parties no later than ten (10) days after the filing of the prehearing order or thirty (30) days before the date set for hearing, whichever is later; provided that, upon good cause shown, the Hearing Officer may allow the motion to be filed at any time before the close of the hearing.

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

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

(4) Affidavits shall be made upon personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to 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 an expert.

(5) The Hearing Officer may set the motion for oral argument and call for the submission of proposed conclusions of law, findings of fact, and briefs. If the period required to rule upon the motion will extend beyond the date set for the hearing, the Hearing Officer may, on the Hearing Officer's own initiative, continue the hearing until the Hearing Officer rules upon the motion.

(6) The Hearing Officer may determine that the matter may better be resolved via an evidentiary hearing and is inappropriate for resolution by summary determination. If the Hearing Officer decides to deny a summary determination motion, the Hearing Officer shall notify the parties in writing of that determination.

(7) If all issues are decided by summary determination, no hearing will be held, and the Hearing Officer shall prepare his or her decision. If summary determination is denied, or if partial summary determination is granted, the Hearing Officer shall issue a memorandum opinion and order, interlocutory in nature, and the hearing will proceed on the remaining issues and factual matters still in dispute.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-13, 50-13-17.

590-4-6-.14 Motions.

(1) An application to the Hearing Officer for an order requiring any party to take any action or for the entry of any interlocutory ruling shall be made by motion. Unless made during the hearing, motions shall be in writing, shall state specifically the grounds therefore and shall describe the action or order sought. A copy of any written motion shall be served upon all parties.

(2) Within ten (10) days after service of any written motion, any party to the proceedings may file a response to the motion. The time for response may be shortened or extended by the Hearing Officer for good cause shown. Any party desiring resolution of a motion prior to the expiration of the ten (10) day response period shall file a written request for expedited consideration with the motion.

(3) Unless otherwise provided by the Hearing Officer, the Act, or the Rules relating to a specific type of motion, all motions shall be filed at least ten (10) days prior to the date set for hearing unless the need or opportunity for the motion could not reasonably have been foreseen ten (10) days prior to said date in which case the motion shall be filed or presented as soon as possible after the need or opportunity for the motion becomes reasonably foreseeable.

(4) All motions and responses shall include, or be accompanied by, citations of supporting authorities, and, when a motion depends upon factual allegations, supporting affidavits or citations to evidentiary materials of record.

(5) The Hearing Officer may, either upon the Hearing Officer's own initiative or at the request of any party, 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 to be filed. The Hearing Officer shall give notice of a hearing on a motion at least five (5) days prior to the date set for the hearing. At the discretion of the Hearing Officer, such hearings may be conducted, in whole or in part, via telephonic conference. If a hearing on a motion is not requested or deemed justified, the Hearing Officer shall rule upon the motion forthwith.

(6) Multiple motions may be consolidated for hearing or heard at a prehearing conference. The Hearing Officer may request submission of briefs, oral argument, or both, either in support of, or in opposition to, any motion.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.15 Withdrawal of Request for Hearing; Settlement.

(1) The party requesting the hearing may withdraw a request for hearing at any time, whereupon the Hearing Officer may enter an order dismissing the matter.

(2) The parties may, at any time, present to the Hearing Officer, a proposed settlement proposal. Upon receipt of such a proposal, the Hearing Officer may accept or reject such proposal.

(3) Nothing herein shall preclude the Commissioner from resolving, in his or her sole discretion, any contested case by consent order or other appropriate action.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-13.

590-4-6-.16 Evidence; Official Notice.

(1) Pursuant to the APA, the Hearing Officer shall apply the rules of evidence as applied in the trial of civil nonjury cases in the superior courts and may, when necessary to ascertain facts not reasonably susceptible of proof under such rules, consider evidence not otherwise admissible thereunder if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. At the discretion of the Hearing Officer, such evidence that 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 or 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 expert witness prepared such document and that it is correct to the best of the expert witness's 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 expert 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 Commissioner in the normal course of his or her 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 Hearing Officer, the use of the entire document would unnecessarily add to the record's length. The entire document shall be made available for examination or copying, or both, by other parties at a reasonable time and place.

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

(3) The Hearing Officer shall give effect to statutory presumptions and the rules of privilege recognized by law.

(4) If scientific, technical, or other specialized knowledge may assist the Hearing Officer 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 therefore without prior disclosure of the underlying facts or data, unless the Hearing Officer requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(5) The Hearing Officer shall have the discretion to authorize or require the submission of direct testimony in written form. Unless otherwise ordered by the Hearing Officer, a party submitting such testimony in support of an issue on which he, she, or it has the burden of proof shall file and serve the testimony upon all parties not less than fifteen (15) Days before the hearing. All other such testimony shall be filed and served upon all parties not less than five (5) days before the hearing. The admissibility of the evidence contained in written testimony shall be subject to the same rules as if the testimony were produced under oral examination. The witness presenting the statement shall swear to or affirm the statement at the hearing and shall be subject to full cross-examination during the course of the hearing.

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

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

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

(9) The weight to be given to any evidence shall be determined by the Hearing Officer based upon its reliability and probative value.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-15.

590-4-6-.17 Subpoenas and Notices to Produce.

(1) The Hearing Officer shall have the authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of objects or documents at depositions or hearings provided by these Rules and the Act.

(2) Requests for subpoenas shall be in writing and filed at least five (5) days prior to the hearing or deposition at which the attendance of the witness or the production of documents 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 be issued by the Hearing Officer under the seal of the agency for which the Hearing Officer working and shall state the title of the action. The party requesting the subpoenas shall be responsible for filling in the subpoenas in a manner consistent with the request for subpoenas and serving the same sufficiently in advance of the hearing to secure the attendance of the witness or the availability of the witness's testimony on deposition at the time of the hearing.

(3) Any party that is not represented by counsel may be relieved by the Hearing Officer of the requirements of paragraph (2) above other than the service requirements. At the discretion of the Hearing Officer, such a party may obtain subpoenas by orally providing the Clerk with the names of the persons desired to be subpoenaed and a description of the testimony or documents or objects sought. If such a request for subpoenas is made orally and approved by the Hearing Officer, the Clerk shall reduce the request to writing and shall have a copy of the request served upon all other parties.

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

(5) Once issued, a subpoena may be quashed by the Hearing Officer if it appears that the subpoena is unreasonable or oppressive, or that the testimony, documents, or objects sought are irrelevant, immaterial, or cumulative and unnecessary to a party's preparation and presentation of his, her, or its position at the hearing, or that, for other good reasons, basic fairness dictates that the subpoena should not be enforced. The Hearing Officer may also condition denial of a motion to quash a subpoena upon the advancement by the person in whose behalf the subpoena is issued of 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) Where a party desires to compel production of documents or objects in the possession, custody, or control of another party, in lieu of serving a subpoena under this Rule, the party desiring the production may serve a notice to produce upon the other party. Service may be perfected in accordance with paragraph (4) above, but no fees or mileage shall be allowed therefor. Paragraphs (5) and (6) above shall also apply to such notices. The notice shall be in

writing, signed by the party seeking production of the evidence, or his, her, or its attorney, and shall be directed to the opposite party or his, her, or its attorney. A copy of any notice to produce shall be filed simultaneously with the Clerk.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-13.

590-4-6-.18 Depositions and Written Questions to Secure Testimony.

(1) Any time during the course of a proceeding, the Hearing Officer may, in the Hearing Officer's discretion, order that the testimony of a witness be taken by deposition or on written questions. Application to take a deposition in lieu of personal appearance at the hearing shall be made by motion filed with the Clerk and served upon all parties. Such motion shall state the name and address of the witness, the time when, the place where, and the subject matter about which the witness would be deposed, the relevance of such testimony, and the specific reason why the witness cannot, or will not, appear to testify at the hearing.

(2) In the exercise of the Hearing Officer's discretion in deciding whether to order testimony by deposition, the Hearing Officer may consider, among other factors:

(a) Whether requiring the appearance of a witness subject to subpoena would endanger the witness's health or work an undue hardship;

(b) Whether a showing has been made that a non-resident potential witness, who is not subject to subpoena in this State and is willing to appear voluntarily to be deposed in the jurisdiction of the witness's residence, would be subject to being compelled to appear and be deposed under any law in the jurisdiction of the witness's residence (e.g., a Uniform Foreign Depositions Act); or

(c) Whether ordering the taking of testimony by deposition will result in an undue burden on any other party, an undue delay in the proceeding, or any injury to other parties from the delay.

(3) If the Hearing Officer orders testimony by deposition, the Hearing Officer may specify whether the scope of examination upon deposition should be limited in any way.

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

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

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

the deposition. 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 could be discovered in the exercise of reasonable diligence.

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

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

(e) The deposition shall be transcribed, certified by the officer taking the same, and filed with the Clerk. Any party who contends that the transcript does not truly or fully disclose what transpired at the deposition shall file a notice with the Clerk specifying any alleged errors and omissions within ten (10) days of the filing of the deposition. If the parties are unable to agree concerning the alleged errors and omissions, the Hearing Officer shall set the matter down for hearing with notice to all parties and shall resolve the differences to make the record accurately conform to the truth.

(f) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to, and returned with, the deposition, and may be inspected and copied by any 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.

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

(6) Subject to appropriate rulings on objections, a deposition or written questions and answers shall be received in evidence as if the testimony contained therein had been given by the witness before the Hearing Officer.

(7) Whenever used in this Rule, the word "witness" shall be construed, where appropriate, to include parties.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-13.

590-4-6-.19 Nature of Proceedings.

(1) In any hearing conducted under the Act and these Rules, the Hearing Officer shall make an independent determination on the basis of the competent evidence presented at the hearing.

(2) Unless otherwise provided by federal or state statute or rule, the standard of proof on all issues in a hearing shall be a preponderance of the evidence.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.20 Hearing Procedure.

(1) The Hearing Officer shall conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. For these purposes, the Hearing Officer may:

- (a) Arrange for, and issue, notices of the date, time, and place of hearings and conferences;
- (b) Establish the methods and procedures to be used in the development of the evidence;
- (c) Hold 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 other procedural matters before the Hearing Officer, including, but not limited to, motions to dismiss for lack of jurisdiction or motions for summary determination;
- (j) Order that the hearing be conducted in stages;
- (k) Allow cross-examination;
- (l) Order that any information so entitled under applicable state or federal rule or statute be treated as confidential or privileged 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 committed in the Hearing Officer's presence;

(n) Subpoena and examine any witnesses or evidence the Hearing Officer believes necessary for a full and complete record; and

(o) Take any action not inconsistent with the Act and these Rules or the APA for the maintenance of order at the hearing and for the expeditious, fair, and impartial conduct of the proceeding.

(2) When two or more parties have substantially similar interests and positions, the Hearing Officer may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to argue motions and objections on behalf of those parties. Attorneys may, however, at the Hearing Officer's discretion, engage in cross-examination relevant to matters that, in the Hearing Officer's opinion, have not been adequately covered by previous cross-examination.

(3) Whenever any party raises issues under either the Georgia or United States Constitution, the sections of any laws or rules constitutionally challenged and any constitutional provisions such laws or rules are alleged to violate must be stated with specificity. In addition, an allegation of unconstitutionality must be supported by a statement either of the basis for the claim of unconstitutionality as a matter of law or of the facts under which the party alleges that the law or rule is unconstitutional as applied to the party. Although the Hearing Officer is not authorized to resolve constitutional challenges to statutes or rules, the Hearing Officer may, in the Hearing Officer's discretion, take evidence and make findings relating to such challenges.

(4) Any hearing that is required, or permitted, hereunder may be conducted by utilizing remote telephonic or electronic communications if the record reflects that all parties have consented to the conduct of the hearing by use of such communications or that the Hearing Officer has determined that such procedure will not jeopardize the rights of any party to the hearing.

(5) In proceedings before the Hearing Officer, if any party or an agent or employee of a party disobeys or resists any lawful order or process; or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document; or refuses to appear after having been subpoenaed; or, upon appearing, refuses to take the oath or affirmation as a witness; or after taking the oath or affirmation, refuses to testify; or disobeys any other order issued by the Hearing Officer, any party may apply to, and the Hearing Officer shall certify the facts to, the Superior Court of the county where the offense is committed for appropriate action, including a finding of contempt. In addition to or in lieu of said remedy, the Hearing Officer may impose sanctions against any party due to the disobedience or resistance of that party or his or her or its privy, including, but not limited to, striking the party's pleading, entering a summary order against the party, or take an appropriate adverse evidentiary inference.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-13, 50-13-15.

590-4-6-.21 Record of Hearings.

(1) All intermediate rulings, orders, and notices issued by the Hearing Officer, all pleadings and motions, all recordings or transcripts of oral hearings or arguments, all written direct and rebuttal testimony, any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceedings, a statement of matters officially noticed, all proposed findings, conclusions, and briefs and a Final Order of the Hearing Officer shall be a part of the hearing record and shall be available to the public, except as provided in any applicable federal or state statute or rule according confidentiality or privileged treatment, in the office of the Clerk as soon as received in that office.

(2) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded. Upon written request, a transcript of any oral proceeding, or part thereof, shall be furnished to any party at the requesting party's expense.

(3) All documentary and physical evidence shall be retained by the Clerk.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-13, 50-13-17.

590-4-6-.22 Proposed Findings of Fact, Conclusions of Law, and Briefs.

At the conclusion of the hearing, the Hearing Officer may require the parties to submit proposed findings, conclusions, and briefs in support thereof. If required, the Hearing Officer shall specify the date by which the findings, conclusions, and briefs in support shall be filed with the Clerk and served on all parties. Reply briefs may be allowed in the sole discretion of the Hearing Officer.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.23 Newly Discovered Evidence.

Prior to the entry of the Hearing Officer's final order, any party may move the Hearing Officer for an order allowing the introduction of additional, newly discovered evidence that was not discoverable in the exercise of reasonable diligence at the time of the hearing. If the Hearing Officer determines that such evidence is proper newly discovered evidence that may materially impact the decision to be rendered, the Hearing Officer shall hear and receive such evidence in the manner prescribed for the receipt of evidence by these Rules.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.24 Closure of Hearing Record.

Except as provided in this Rule or unless otherwise ordered by the Hearing Officer, the record shall be closed at the conclusion of the evidentiary hearing. If the Hearing Officer requests the preparation of a transcript or requires or authorizes the filing of proposed findings of fact, conclusions of law, or post-hearing briefs, the record shall be deemed closed upon the receipt by the Clerk of the transcript or upon the expiration of the time allowed for the required or authorized filings, whichever date comes later.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.25 Final Order of the Hearing Officer.

The Hearing Officer shall review and evaluate all the evidence and any interlocutory rulings, and shall either rule orally from the bench, stating findings of fact, conclusions of law, and a decision or order in the record, or may issue and file written findings, conclusions, and a decision or order with the Clerk, who shall immediately serve copies upon all parties or their counsel of record. The Hearing Officer shall render his or her final order within the time provided by applicable state or federal statute or rule or, in any event, within thirty (30) days after the close of the record unless the Hearing Officer determines that the complexity of the issues or the length of the record require an order extending such period, in which event the Hearing Officer shall render a decision or final order at the earliest date practicable.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-17.

590-4-6-.26 Motions for Reconsideration or Rehearing; Stay of Decision.

(1) A motion for reconsideration or rehearing of a decision or final order will be considered only if the motion is filed within ten (10) days of the entry of the decision or final order. However, the time for filing such a motion may be extended by the Hearing Officer for good cause.

(2) The filing of such a motion shall not operate as a stay of enforcement of the Hearing Officer's decision or final order. But, the Hearing Officer may grant a stay upon appropriate terms, for good cause shown, if the Hearing Officer finds that the public safety and welfare will not be harmed by the issuance of a stay.

(3) The Hearing Officer shall not grant a motion for rehearing until after the expiration of the period for a response by any other party.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.27 Default.

(1) If a party fails to participate in any stage of a proceeding, fails to file any pleading required by the Hearing Officer under the Act or these Rules or any other applicable law or agency rule, or fails to comply with an order or subpoena issued by the Hearing Officer, the Hearing Officer, either on the Hearing Officer's own motion or on the motion of any party, may enter an order resulting in default against the offending party. Any such order shall specify the grounds for the order.

(2) Any default order may provide for a default as to all issues, a default as to specific issues, or other limitations, including limitations on the presentation of evidence and on the defaulting party's continued participation in the proceeding. In determining whether to enter a default and in considering the appropriate penalty for a default, the Hearing Officer shall give due regard for the interests of justice, the nature of the failure of the party in default, and the need for the orderly and prompt conduct of the proceeding.

(3) Within ten (10) days of the entry of a default order, the party against whom it was issued may file a written motion requesting that the order be vacated or modified and stating the grounds for said motion. The Hearing Officer may allow a default to be opened where the failure of the party in default was the result of providential cause or excusable neglect or where the Hearing Officer, from all the facts, determines that a proper case has been made for the default to be opened on terms to be fixed by the Hearing Officer.

(4) After issuing a default order, the Hearing Officer shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default, or with such limited participation as determined appropriate under paragraph (2) of this Rule, and shall determine all issues in the proceeding, including those affecting the party in default.

(5) If a party fails to attend an evidentiary hearing after having been given written notice thereof, the Hearing Officer 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 Hearing Officer may dismiss the action on the motion of any other party or on the Hearing Officer's own motion. Failure of a party to appear at the time set for hearing shall constitute a failure to attend unless excused by the Hearing Officer for good cause.

Authority O.C.G.A. Secs.10-5-70, 10-5-71, 10-5-73, 10-5-74, 50-13-13.

590-4-6-.28 Expedited Proceedings.

Whenever any hearing is required by law to be held pursuant to an expedited hearing schedule inconsistent with these Rules, or whenever the Hearing Officer, either on motion of any party or on the Hearing Officer's own motion, determines that an expedited hearing schedule is necessary to protect the interests of the parties or the public safety or welfare, the Hearing Officer shall require expedited filing of pleadings and shall conduct the hearing in such manner as justice requires.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.29 Appearance by Attorneys; Signing of Pleadings; Appearance Pro-Se.

(1) Except as authorized in paragraph (2) of this Rule, or where specifically authorized by an applicable federal or Georgia statute or rule, no person shall represent any party in a proceeding before the Hearing Officer unless the person is an active member in good standing of the State Bar of Georgia and has filed an entry of appearance in the case in the attorney's individual name. An entry of appearance shall not be required if a pleading, motion, or other paper has previously been filed on the case by the attorney of record pursuant to paragraph (3) of this Rule.

(2) Nonresident attorneys who are not active members of the State Bar of Georgia may be permitted to appear before the Hearing Officer in isolated cases upon motion to, and in the discretion of, the Hearing Officer. A motion to appear in a particular case shall state that the movant is an active member in good standing of the bar of the jurisdiction in which the movant regularly practices and that the movant agrees to behave in accordance with the Georgia standards of professional conduct and the duties imposed upon attorneys by Code Section 15-19-4.

(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 Hearing Officer, upon motion of any party or upon the Hearing Officer'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.

(4) Any individual party may appear at any proceeding under the Act pro se, on his or her own behalf, without representation by an attorney. Any party that is a legal entity may appear only through an attorney who is an active member in good standing of the State Bar of Georgia or authorized to appear pursuant to paragraph (2) of this Rule.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.30 Involuntary Dismissal.

After a party with the burden of proof has completed the presentation of his, her, or its evidence, any other party, without waiving his, her, or its right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that the party that has presented his, her, or its evidence has failed to carry his, her, or its burden to demonstrate his, her, or its right to some or all of the determinations sought by that party. The Hearing Officer may then determine the facts and render a Decision against the party that has presented its evidence as to any or all issues or may decline to render a decision until after the close of all the evidence.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.31 Discovery.

Discovery shall not be available in any proceeding before a Hearing Officer except to the extent specifically authorized by a statute or rule. Nothing in this Rule is intended to limit the provisions of Article 4 of Chapter 18 of Title 50.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.32 Continuances and Conflicts.

(1) All motions for continuances shall be granted only upon a showing of good cause and shall not be granted simply because the parties and/or their counsel agree thereto. Among other factors the Hearing Officer may consider in connection with a motion for continuance are the impact of the continuance upon any parties who do not consent to the motion, the Hearing Officer's calendar, the difficulty in rescheduling the hearing site, the need for an expeditious resolution of the matter(s) at issue, and the public safety and welfare. A notice of conflict filed pursuant to paragraph (2) below shall not be considered as a motion for a continuance unless the notice expressly requests a continuance.

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

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.

590-4-6-.33 Withdrawals and Leaves of Absence.

The withdrawal and leave of absence provisions of the Uniform Rules for the Superior Courts shall be followed.

Authority O.C.G.A. Secs. 10-5-70, 10-5-71, 10-5-73, 10-5-74.