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# *The* **NORTH CAROLINA REGISTER**

## IN THIS ISSUE.....

GENERAL STATUTES

EXECUTIVE ORDERS

JUDICIAL ORDERS

ADMINISTRATIVE ORDERS

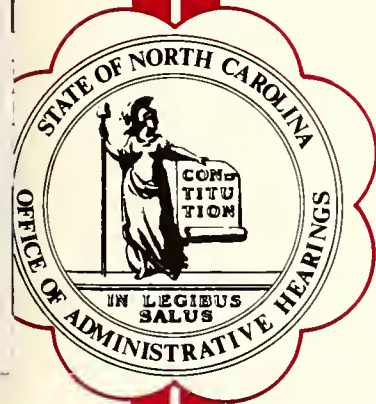
STATEMENTS OF ORGANIZATION

PROPOSED RULES

LIST OF RULES AFFECTED

ISSUE DATE: APRIL 15, 1986

Volume 1 • Issue 1 • Pages 1-73



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately one hundred pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 12 issues.

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: Subscriptions.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include a reference to the Statutory Authority for the action; the time and place of the public hearing and a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Following publication of the proposal in the *North Carolina Register*, at least 60 days must elapse before the agency may take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule, cannot become effective earlier than the first day of the second calendar month after the adoption is filed.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in effect for the period specified in the rule or 120 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards. The NCAC is available in two formats.

- (1) In looseleaf pages at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars (\$40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a "List of Rules Affected" which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the *North Carolina Register*.

Requests for looseleaf pages of rules or the NCAC on microfiche should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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# NORTH CAROLINA REGISTER



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## ISSUE CONTENTS

I. GENERAL STATUTES	
Chapter 150B . . . . .	3
Chapter 7A . . . . .	21
II. EXECUTIVE ORDERS	
Executive Orders 1-25 . . . .	23
III. JUDICIAL ORDERS	
Appointment of Robert Arthur Melott . . . .	45
IV. ADMINISTRATIVE ORDERS	
Office of Administrative Hearings Seal . . . . .	46
Appointment of Beecher Reynolds Gray . . . .	47
Appointment of Fred Gilbert Morrison, Jr . .	48
Appointment of Angela Rebecca Bryant . . . .	49
Appointment of Thomas R. West . . . . .	50
V. STATEMENTS OF ORGANIZATION	
Office of Administrative Hearings . . . . .	51
VI. PROPOSED RULES	
Office of Administrative Hearings	
General . . . . .	52
Rules Division . . . . .	52
Hearings Division . . . . .	61
VII. LIST OF RULES AFFECTED	
Volume 10, No. 1 . . . . .	71
(April 1, 1986)	
VIII. CUMULATIVE INDEX . . . . .	73

NORTH CAROLINA REGISTER  
Publication Deadlines and Schedules  
(April 1986 - March 1987)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Earliest Effective Date
04/15/86	03/25/86	04/01/86	05/15/86	06/14/86	08/01/86
05/15/86	04/24/86	05/01/86	06/14/86	07/14/86	09/01/86
06/16/86	05/27/86	06/03/86	07/16/86	08/15/86	10/01/86
07/15/86	06/25/86	07/02/86	08/14/86	09/13/86	11/01/86
08/15/86	07/28/86	08/04/86	09/14/86	10/14/86	12/01/86
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12/15/86	11/25/86	12/02/86	01/14/87	02/13/87	04/01/87
01/15/87	12/29/86	01/05/87	02/14/87	03/16/87	05/01/87
02/16/87	01/26/87	02/02/87	03/18/87	04/17/87	06/01/87
03/16/87	02/23/87	03/02/87	04/15/87	05/15/87	07/01/87



GENERAL STATUTES OF NORTH  
CAROLINA  
CHAPTER 150B  
ADMINISTRATIVE PROCEDURES ACT

150B-1. Policy and scope. --(a) The policy of the State is that the three powers of government, legislative, executive, and judicial, are, and should remain, separate. The intent of this Chapter is to prevent the commingling of those powers in any administrative agency and to ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) The purpose of this Chapter is to establish as nearly as possible a uniform system of administrative rule making and adjudicatory procedures for State agencies.

(c) This Chapter shall apply to every agency, as defined in G.S. 150B-2(1), except to the extent and in the particulars that any statute, including subsection (d) of this section, makes specific provisions to the contrary.

(d) The following are specifically exempted from the provisions of this Chapter: the Administrative Rules Review Commission, the Employment Security Commission, the Industrial Commission, the Occupational Safety and Health Review Board, and the Utilities Commission.

The North Carolina National Guard is exempt from the provisions of this Chapter in exercising its court-martial jurisdiction.

The Department of Correction is exempt from the provisions of this Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which shall apply.

Articles 2, 3, and 3A of this Chapter shall not apply to the Department of Transportation in rule making or administrative hearings as provided for by Chapter 20 of the General Statutes or to the Department of Revenue.

Article 4 of this Chapter, governing judicial review of final administrative decisions, shall apply to The University of North Carolina and its constituent or affiliated boards, agencies, and institutions, but The University

of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter. Article 4 of this Chapter shall not apply to the State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce.

Article 3 of this Chapter shall not apply to agencies governed by the provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a).

150B-2. Definitions. --As used in this Chapter,

(1) "Agency" means any agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the State government of the State of North Carolina but does not include any agency in the legislative or judicial branch of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or local boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly.

(2) "Contested case" means any administrative proceeding, by whatever name called, in which the legal rights, duties, or privileges of a party are required by law to be determined after an opportunity for an adjudicatory hearing. "Contested case" includes licensing and any administrative proceeding to levy a monetary penalty regardless of whether the statute authorizing such a penalty requires an adjudicatory hearing. "Contested case" does not include rule making, declaratory rulings, or the award or denial of a scholarship or grant.

(2a) "Effective" means that a valid rule has been filed as required by G.S. 150B-59 and either has not been delayed by or has been returned to the Administrative Rules Review Commission as required by G.S. 143A-55.3. A rule that is effective is enforceable to the extent permitted by law.

(3) "License" means any certificate, permit or other evidence, by whatever name

called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.

(4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. 'Licensing' does not include controversies over whether an examination was fair or whether the applicant passed the examination.

(4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.

(4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. 'Occupational licensing agency' does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.

(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate; provided this subdivision shall not be construed to permit the hearing agency or any of its officers or employees to appeal its own decision for initial judicial review.

(6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.

(7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.

(8) "Residence" means domicile or principal place of business.

(8a) "Rule" means any agency regulation, standard or

statement of general applicability that implements or interprets laws enacted by the General Assembly or Congress or regulations promulgated by a federal agency or describes the procedure or practice requirements of any agency not inconsistent with laws enacted by the General Assembly. The term includes the amendment or repeal of a prior rule. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies, including policies and procedures manuals, if such a statement does not directly or substantially affect the procedural or substantive rights or duties of persons not employed by the agency or group of agencies.

b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretative statements within the delegated authority of the agency that merely define, interpret or explain the meaning of a statute or other provision of law or precedent.

d. A form, the contents or substantive requirements of which are prescribed by rule or statute or the instructions for the execution or use of the form.

e. Statements of agency policy made in the context of another proceeding, including:

1. declaratory rulings under G.S. 150B-17;

2. orders establishing or fixing rates or tariffs.

f. Statements of agency policy, provided that the agency policy is not inconsistent with any law enacted by the General Assembly, communicated to the public by use of signs or symbols, concerning:

1. the use or creation of public roads or bridges;

2. the boundaries of public facilities and times when public facilities are open to the public; or

3. safety in use of public facilities.

g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases;

h. Scientific, architectural, or engineering standards, forms, or procedures.

(9) "Valid" means that the rule has been adopted pursuant to the procedure required by law. A valid rule is unenforceable until it is made effective.

150B-3. Special provisions on licensing. --(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on

service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

## Article 2. Rule Making.

150B-9. Minimum procedural requirements; limitations on rule making authority; no criminal sanctions authorized. --(a) It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for temporary rules which are provided for in G.S. 150B-13, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals or diminishes additional requirements imposed by law or any summary power granted by law to the State or any State agency. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article.

(b) Each agency shall adopt, amend, suspend or repeal its rules in accordance with the procedures specified in this Article and pursuant to authority delegated by law and in full compliance with its duties and obligations. No agency may adopt any rule that implements or interprets any statute or other legislative enactment unless the power, duty, or authority to carry out the provisions of the statute or enactment is specifically conferred on the agency in the enactment, nor may any agency make any rule enlarging the scope of any trade or profession subject to licensing.

(c) The power to declare what shall constitute a crime and how it shall be punished and the power to establish standards for public conduct are vested exclusively in the General Assembly. No agency may adopt any rule imposing a criminal penalty for any act or failure to act, including the violation of any rule, unless the General Assembly authorizes a criminal



sanction and specifies a criminal penalty for violation of the rule.

(d) No agency may adopt as a rule the verbatim text of any federal or North Carolina statute or any federal regulation, but an agency may adopt all or any part of such text by reference under G.S. 150B-14.

150B-10. Statements of organization and means of access to be published. --To assist interested persons dealing with it, each agency shall, in a manner prescribed by the Administrative Rules Review Commission, prepare a description of its organization, stating the process whereby the public may obtain information or make submissions or requests. The chief hearing officer of the Office of Administrative Hearings shall publish these descriptions annually.

150B-11. Special requirements. --In addition to other rule-making requirements imposed by law, each agency shall:

(1) Adopt rules setting forth the nature and requirements of all formal and informal procedures available, including a listing of all forms that are required by the agency. Procedures concerning only internal management which do not directly affect the rights of or procedures available to the public shall not be adopted as rules.

(2) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions, except those used only for internal management of the agency.

(3) Submit to the Director of the Budget a summary of any proposed rule requiring the expenditure or distribution of State funds and obtain approval of such expenditure or distribution of State funds prior to publishing the notice of public hearing required by G.S. 150B-12(2). For purposes of this subdivision the term 'State funds' shall have the same meaning as is set out in G.S. 143-1 and shall also apply to the funds of all occupational licensing boards included under G.S. 150B-1. The agency shall include a fiscal note with any proposed rule, other than a temporary rule, so submitted. The fiscal note shall state what

effect, if any, the proposed rule will have on the revenues, expenditures, or fiscal liability of the State or its agencies or subdivisions. The fiscal note shall include an explanation of how such effect, if any, was computed.

150B-12. Procedure for adoption of rules. --(a)

Before the adoption, amendment or repeal of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, opinions, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none then at least 30 days before the public hearing and at least 60 days before the adoption, amendment, or repeal of the rule. The notice shall include:

(1) A reference to the statutory authority under which the action is proposed;

(2) The time and place of the public hearing and a statement of the manner in which data, opinions, and arguments may be submitted to the agency either at the hearing or at other times by any person; and

(3) The text of the proposed rule, or amendment in the form required by G.S. 150B-63(d2) and the proposed effective date of the rule or amendment.

(b) The agency shall transmit copies of the notice to the chief hearing officer of the Office of Administrative Hearings, the Attorney General, and the Governor.

(c) The agency shall publish the notice in the North Carolina Register and as prescribed in any applicable statute.

The agency may also publish the notice or a synopsis of the notice in other ways selected by the agency to give notice to persons likely to be affected by the proposed rule. Methods that may be employed by the agency, depending upon the circumstances, include publication of the notice in one or more newspapers of general circulation or, when appropriate, in trade, industry, governmental or professional publications.

(d) The public hearing shall not be conducted as a contested case unless a specific statute requires that the proposed rule be adopted by adjudicatory procedures.

(e) The proposed rule shall not be changed or modified



after the notice required by this section is published and before the rule-making hearing. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption. The record in every rule-making proceeding under this Article shall remain open at least 30 days either before or after the hearing for the purposes of receiving written comments, and any such comments shall be included in the hearing records. All comments received, as well as any statement of reasons issued to an interested person under this section, shall be included in the rule-making record.

(f) No rule-making hearing is required for the adoption, amendment, or repeal of a rule which solely describes forms or instructions used by the agency.

(g) No rule-making hearing is required if the Administrative Rules Review Commission certifies that the amendment to a rule does not change the substance of the rule and that the amendment is:

(1) A relettering or renumbering instruction; or,

(2) The substitution of one name for another when an organization or position is renamed; or,

(3) The correction of a citation to rules or laws which has become inaccurate since the rule was adopted because of repealing or renumbering of the rule or law cited; or

(4) The correction of a similar formal defect; or

(5) A change in information that is readily available to the public such as addresses and telephone numbers.

(h) No rule-making hearing is required to repeal a rule if the repeal of the rule is specifically provided for by the Constitution of the United States, the Constitution of North Carolina, any federal or North Carolina statute, any federal regulation, or a court order.

150B-13. Temporary rules. --(a) Except as provided in subsection (b) of

this section, if an agency which is not exempted from the notice and hearing requirements of this Article by G.S. 150B-1 determines in writing that:

(1) Adherence to the notice and hearing requirements of this Article would be contrary to the public interest; and that

(2) The immediate adoption, amendment, or repeal of a rule is necessitated by and related to:

a. A threat to public health, safety, or welfare resulting from any natural or man-made disaster or other events that constitute a life threatening emergency;

b. The effective date of a recent act of the General Assembly or the United States Congress;

c. A federal regulation; or

d. A court order, the agency may adopt, amend, or repeal the rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practicable. The agency must accompany its rules filing with the chief hearing officer of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule, together with the reasons for that finding and a copy of the notice of hearing on the proposed permanent rule.

The written certification of the finding of need for the temporary rule shall be signed by:

(1) The member of the Council of State in the case of the Departments of Justice, Insurance, Public Education, Labor, Agriculture, Treasurer, State Auditor, or Secretary of State.

(2) The chairman of the board in the case of an occupational licensing board.

(3) The Governor in the case of all other agencies.

(b) If the Department of Crime Control and Public Safety, Transportation, Revenue, or Correction determines in writing that the immediate adoption, amendment, or repeal of a rule is necessitated by:

(1) The public health, safety, or welfare;

(2) The effective date of a recent act of the General Assembly or the United States Congress;

(3) A federal regulation; or

(4) A court order, the agency may adopt, amend, or repeal the rule. The agency must accompany its rule filing with the chief hearing officer of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule signed by the Governor together with the reasons for that finding. In the case of the Department of Correction, in addition to the reasons set forth in subdivisions (1) through (4) of this subsection, the Department may file a temporary rule when necessary for the management and control of persons under the custody or supervision of the Department in extraordinary circumstances as certified by the Secretary. The Department shall file any temporary rule within two working days of its adoption by the Secretary under G.S. 148-11.

(c) Rules filed under subsections (a) and (b) of this section shall be effective for a period of not longer than 120 days. An agency adopting a temporary rule shall begin normal rule-making procedures on the permanent rule under this Article at the same time the temporary rule is adopted.

150B-14. Adoption by reference. --An agency may adopt by reference in its rules, without publishing the adopted matter in full:

(1) All or any part of a code, standard, or regulation which has been adopted by any other agency of this State or by any agency of the United States or by a generally recognized organization or association;

(2) Any plan or material which is adopted to meet the requirements of any agency of the United States and approved by that agency; or

(3) Any plan, material, manual, guide or other document establishing job application or employment practices or procedures of any State agency other than the State Personnel Commission. The State Personnel Commission, however, shall incorporate by reference in its rules job classification standards, including but not limited to those relating to qualifications and salary levels.

The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of

the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies of the adopted matter can be obtained and the amount of any charge for the copy as of the time the rule is adopted.

150B-15. Continuation of rules. --When a law authorizing or directing an agency to promulgate rules is repealed, and (i) substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law, or (ii) the function of the agency to which the rules are related is transferred to another agency by law or executive order, the existing rules of the original agency shall continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the transferred duty or function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed and (i) substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and (ii) the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the law repealing the agency's rule-making power or abolishing the agency.

150B-16. Petition for adoption of rules. --Any person may petition an agency to promulgate, amend, or repeal a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with G.S. 150B-12 and G.S. 150B-13: provided, however, commissions and boards shall act on a petition at their next regularly scheduled meeting, but in any case no later than 120 days after

submission of a petition. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review.

150B-17. Declaratory rulings. --On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

#### Article 3.

##### Administrative Hearings.

150B-23. Commencement; assignment of hearing officer; hearing required; notice; intervention. --(a) Except as provided in subsection (a1), all contested cases other than those conducted under Article 3A of this Chapter shall be commenced by the filing of a petition with the Office of Administrative Hearings. Any petition filed by a party other than an agency shall be verified or supported by affidavit and shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) exceeded its authority or jurisdiction;
- (2) acted erroneously;
- (3) failed to use proper procedure;

(4) acted arbitrarily or capriciously; or

(5) failed to act as required by law or rule. The parties in a contested case shall be given an opportunity for a hearing without undue delay.

All contested cases under Chapter 126 of the General Statutes shall be conducted in the Office of Administrative Hearings. Except in contested cases under Chapter 126 of the General Statutes, a party may waive the right to have a contested case conducted by a hearing officer in the Office of Administrative Hearings in the petition filed to commence the case, in which case the contested case shall be conducted by the agency. In the absence of a waiver, a contested case under this Article shall be presided over by the chief hearing officer of the Office of Administrative Hearings or a hearing officer assigned by him. In assigning hearing officers, the chief hearing officer shall attempt to use personnel having expertise in the subject to be dealt with in the hearing.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the Office of Administrative Hearings in the same manner as other contested cases under this Article, except that the decision of the hearing officer shall be advisory only and not binding on the local appointing authority, unless (1) the hearing officer decides that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal standards require a binding decision. In these two cases, the hearing officer's decision shall be final.

(a1) The parties in a contested case in the Department of Human Resources shall be given an opportunity for a hearing without undue delay.

(b) The parties shall be given notice not less than 15 days before the hearing by the Office of Administrative Hearings or the agency, which notice shall include:



(1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved;

(3) A short and plain statement of the factual allegations; and

(4) If the agency is the Department of Human Resources, a statement of who will conduct the hearing and that the party may request a hearing officer in the Office of Administrative Hearings as provided in G.S. 150B-32.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the hearing officer.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

150B-24. Venue of hearing. --(a) The hearing of a contested case shall be conducted:

(1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;

(2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or

(3) In any county determined by the agency or hearing officer in his discretion to promote the ends

of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

150B-25. Conduct of hearing; answer. --(a) If a

party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the agency or hearing officer may proceed with the hearing in the absence of the party.

(b) A party who has been served with a notice of hearing may file a written response, and a copy must be mailed to all other parties not less than 10 days before the date set for hearing. If the agency is the Department of Human Resources, the response may include a request for a hearing officer in the Office of Administrative Hearings as provided in G.S. 150B-32.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. Any party may submit rebuttal evidence.

150B-26. Consolidation. --When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending, the chief hearing officer of the Office of Administrative Hearings may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings. If one or more, but not all parties in a consolidated contested case in the Department of Human Resources involving multiple aggrieved persons requests a hearing officer in the Office of Administrative Hearings as provided in G.S. 150B-32, the chief hearing officer in the Office of Administrative Hearings shall decide whether to grant the request after consulting with the parties in all the contested cases involved.

150B-27. Subpoena. --After the commencement of a

contested case, the agency or hearing officer may issue subpoenas upon his own motion or upon a written request. When a written request for a subpoena has been made, the agency or hearing officer shall issue the requested subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. Upon written request, the agency or hearing officer shall revoke a subpoena if, upon a hearing, he finds that the evidence the production of which is required does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

150B-28. Depositions and discovery. --(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in contested cases may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall promptly make the records available to a party.

150B-29. Rules of evidence. --(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to

show relevant facts, then the most reliable and substantial evidence available shall be admitted. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the agency or hearing officer in reaching his decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

150B-30. Official notice. --Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument.

150B-31. Stipulations. --(a) The parties in a contested case may, by a stipulation in writing filed with the agency or hearing officer, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent, order, waiver, default, or other method agreed upon by the parties.

150B-32. Designation of hearing officer. --(a) The chief hearing officer of the Office of Administrative Hearings shall assign himself or a hearing officer in the Office of Administrative Hearings to preside as hearing officer in

each contested case. If a party waives the right to have a case conducted in the Office of Administrative Hearings in the petition to commence the case, an agency, one or more members of the agency, a person or group of persons designated by statute, or one or more hearing officers designated and authorized by the agency to conduct contested cases.

(a) A party in a contested case in the Department of Human Resources who has been served with a notice of hearing may request in a response filed pursuant to G.S. 150B-25(b) that the contested case be conducted by a hearing officer in the Office of Administrative Hearings. The agency shall forthwith request the chief hearing officer in the Office of Administrative Hearings to assign himself or another hearing officer to conduct the case, and the chief hearing officer shall make the assignment. In assigning hearing officers, the chief hearing officer shall attempt to use personnel having expertise in the subject to be dealt with in the hearing.

A party waives the right to request a hearing officer in the Office of Administrative Hearings if the response is not filed at least 10 days before the date set for hearing.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearing officer, the agency shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, another hearing officer shall be assigned to continue with the case unless it is shown that substantial prejudice to any party will result, in which event a new hearing shall be held or the case dismissed without prejudice.

150B-33. Powers of hearing officer. --(a) A hearing officer shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative

proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) A hearing officer may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the agency or the Office of Administrative Hearings, as applicable, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;

(3) Provide for the taking of testimony by deposition;

(4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;

(6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;

(7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and

(8) Apply to any judge of the Superior Court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt, and the Court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the administrative agency to perform a function assigned to it by statute or to enable or facilitate the implementation of



a program or policy in aid of which the rule was adopted.

150B-34. Proposal for decision; recommended decision.

--(a) In a contested case conducted by a hearing officer other than the agency officials who will make the final decision, the hearing officer shall:

(1) Make a proposal for decision that contains his findings of fact and conclusions of law and proposed decision, opinion, order, or report;

(2) Deliver a copy of the proposal for decision to each party; and

(3) Give each party an opportunity to file exceptions and proposed findings of fact and to present written arguments to him.

(b) After considering any exceptions, proposed findings of fact, and written arguments of the parties, the hearing officer shall make a recommended decision that contains findings of fact and conclusions of law and a recommended decision, opinion, order, or report. He shall include the recommended decision in the official record prepared pursuant to G.S. 150B-37(a) and shall forward a copy of the official record to the agency.

150B-35. No ex parte communication. exceptions.

--Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case or a hearing officer shall not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate.

150B-36. Final decision.

--A final decision or order in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. If the agency does not adopt the hearing officer's recommended decision as its final decision in a contested case conducted by a hearing officer, the agency shall include in its decision or order the specific reasons why the hearing officer's recommended decision is not adopted. A decision or order

shall not be made except upon consideration of the record as a whole or such portion as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record.

150B-37. Official record.

--(a) The agency or hearing officer who conducts the hearing in a contested case shall prepare an official record of the hearing which shall include:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;

(5) The hearing officer's proposal for decision and exceptions and proposed findings of fact; and

(6) The hearing officer's recommended decision, opinion, order, or report.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

Article 3A.

Other Administrative Hearings.

150B-38. Scope; hearing required; notice; venue.

--(a) The provisions of this Article shall apply to the following agencies:

(1) Occupational licensing agencies;

(2) The State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce; and

(3) The Department of Insurance and the Commissioner of Insurance.

(b) Prior to any agency action in a contested case, the

agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

(1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved; and

(3) A short and plain statement of the facts alleged.

(c) Notice shall be given personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party who has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response must be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by a hearing officer requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the hearing officer may designate another county. A person whose property or rights are the subject matter of the hearing waives his objection to venue if he proceeds in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same

or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article.

150B-39. Depositions; discovery; subpoenas. --(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Upon a request for an identifiable agency record involving a material fact in a contested case, the agency shall promptly provide the record to a party, unless the record relates solely to the agency's internal procedures or is exempt from disclosure by law.

(c) An agency may issue subpoenas in preparation for, or in the conduct of, a contested case upon its own motion. If a written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. Upon written request, the agency shall revoke a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 133-6.

150B-40. Conduct of hearing; presiding officer; ex parte communication. --(a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy.

If a party fails to appear in a contested case after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

(b) Except as provided under subsection (e) of this section, hearings under this Article shall be conducted by a majority of the agency. An agency shall designate one or more of its members to preside at the hearing. If a party files in good faith a timely and sufficient affidavit of the personal bias or other reason for disqualification of any member of the agency, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. If a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer shall be assigned to continue with the case, except that if assignment of a new presiding officer will cause substantial prejudice to any party, a new hearing shall be held or the case dismissed without prejudice.

(c) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;

(3) Provide for the taking of testimony by deposition;

(4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider

simplification of the issues by consent of the parties; and

(6) Apply to any judge of the superior court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt of the agency and its process, and the court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee or party representative with professional training in accounting, actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.

(e) When a majority of an agency is unable or elects not to hear a contested case, the agency shall apply to the chief hearing officer of the Office of Administrative Hearings for the designation of a hearing officer to preside at the hearing of a contested case under this Article. Upon receipt of the application, the chief hearing officer shall, without undue delay, assign a hearing officer to hear the case.

The provisions of this Article, rather than the provisions of Article 3, shall govern a contested case in which the agency requests a hearing officer from the Office of Administrative Hearings.



The hearing officer assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The hearing officer shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law.

A hearing officer shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

The agency may make its final decision only after the hearing officer's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency.

150B-41. Evidence; stipulations; official notice.  
--(a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object to evidence at the hearing in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court of judicial review.

(b) Evidence in a contested case, including records and documents shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S.

150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(c) The parties in a contested case under this Article by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable. Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

150B-42. Final agency decision; official record.

--(a) After compliance with the provisions of G.S. 150B-40(c), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be

supported by substantial evidence admissible under G.S. 150B-41. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record.

(b) An agency shall prepare an official record of a hearing that shall include:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;

(5) Proposed findings and exceptions; and

(6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(c) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests.

#### Article 4.

##### Judicial Review.

150B-43. Right to judicial review. --Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.

150B-44. Right to judicial intervention when decision unreasonably delayed. --Unreasonable delay on the part of any agency or hearing officer in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a

court order compelling action by the agency or hearing officer.

150B-45. Manner of seeking review; time for filing petition; waiver. --In order to obtain judicial review of a final decision under this Chapter, the party seeking review must file a petition in the Superior Court of Wake County or in the superior court of the county where the petitioner resides. The petition may be filed at any time after final decision but must be filed not later than 30 days after a written copy of the decision is served upon the party seeking the review by personal service or by certified mail. Failure to file a petition within the time stated shall operate as a waiver of the right of such party to review under this Chapter, except that, for good cause shown, a judge of the superior court resident in the district or holding court in the county where venue is proper may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver.

150B-46. Contents of petition; copies served on all parties; intervention. --The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding may become a party to the review proceedings by notifying the court within 10 days after receipt of the copy of the petition.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

150B-47. Records filed with clerk of superior court; contents of records; costs. --Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the hearing in the contested case



under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

150B-48. Stay of decision. --At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65.

150B-49. New evidence. --In a review proceeding under this Article, any party may present evidence not contained in the record that is not repetitive.

150B-50. Review by court without jury. --The review of agency decisions under this Chapter shall be conducted by the court without a jury.

150B-51. Scope of review; power of court in disposing of case. --Based on the record and the evidence presented to the court, the court may affirm, reverse, or modify the decision or remand the case to the agency for further proceedings.

150B-52. Appeal to appellate division; obtaining stay of court decision. --Any party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division.

#### Article 5. Publication of Administrative Rules.

150B-58. Short title. --This Article may be cited as 'The Registration of State Administrative Rules Act'.

#### 150B-59. Filing of rules and executive orders.

--(a) Rules adopted by an agency and executive orders of the Governor shall be filed with the chief hearing officer of the Office of Administrative Hearings. No rule, except temporary rules adopted under the provisions of G.S. 150B-13 or curative rules adopted pursuant to G.S. 143B-29.2(d), shall become effective earlier than the first day of the second calendar month after that filing.

(b) The acceptance for filing of a rule by the chief hearing officer, by his notation on its face, shall constitute prima facie evidence of compliance with this Article.

(c) Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on January 1, 1986, that conflict with or violate the provisions of G.S. 150B-9(c) are repealed. Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on January 1, 1986, that do not conflict with or violate the provisions of G.S. 150B-9(c) shall remain in effect until June 30, 1986. These rules are repealed effective July 1, 1986, unless approved by the General Assembly on or before June 30, 1986. The approval of rules by the General Assembly shall not be deemed to enact the approved rules or to prohibit their subsequent amendment, repeal or recodification under the provisions of this Chapter. Rules adopted on or after January 1, 1986, shall become effective as provided in this Chapter.

#### 150B-60. Form of rules; responsibilities of agencies; assistance to agencies.

--(a) In order to be acceptable for filing, the rule must:

(1) Cite the statute or other authority pursuant to which the rule is adopted;

(2) Bear a certification by the agency of its adoption;

(3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements;

(4) Be in the physical form specified by the chief hearing officer of the Office of Administrative Hearings; and

(5) Bear a notation by the Governor that the rule has been submitted in accordance with G.S. 143A-55.3(c). This subdivision does not apply to rules adopted by the Industrial



Commission, or by the Utilities Commission, or to rules adopted by the Department of Transportation relating to traffic sign ordinances or road and bridge weight limits.

(b) Each agency shall designate one or more administrative procedure coordinators whose duties shall be to oversee all departmental functions required by this Chapter. The coordinator's duties shall include providing notice of public hearings; serving as liaison between the agency and the Office of Administrative Hearings, the Administrative Rules Review Commission and the public; and coordinating access to agency rules.

(c) The chief hearing officer of the Office of Administrative Hearings shall:

(1) Maintain an agency rule-drafting section in the Office of Administrative Hearings to draft or aid in the drafting of rules or amendments to rules for any agency; and

(2) Prepare and publish an agency rule-drafting guide which sets out the form and method for drafting rules and amendments to rules, and to which all rules shall comply.

150B-61. Authority to revise form. --(a) The chief hearing officer of the Office of Administrative Hearings shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

(1) To rearrange the order of rules, Chapters, Subchapters, Articles, sections, paragraphs, and other divisions or subdivisions;

(2) To provide or revise titles or catch lines;

(3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;

(4) To rearrange definitions and lists; and

(5) To make other changes in arrangement or in form that do not alter the substance of the rule and that are necessary or desirable for an accurate, clear, and orderly arrangement of the rules.

Revision of form by the chief hearing officer shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule. No later than the close of the fifth working day after the filing of a rule by an agency, the chief hearing

officer shall return to the agency that filed the rule a copy of the rule in any revised form made by the chief hearing officer, together with his certification of the date of the rule's filing.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency.

(b) In determining the drafting form of rules the chief hearing officer shall:

(1) Minimize duplication of statutory language;

(2) Not permit incorporations into the rules by reference to publications or other documents which are not conveniently available to the public; and

(3) To the extent practicable, use plain language in rules and avoid technical language.

150B-62. Public inspection and notification of current and replaced rules

--(a) Immediately upon notation of a filing as specified in G.S. 150B-59(b), the chief hearing officer of the Office of Administrative Hearings shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150B-61(a).

(b) The chief hearing officer shall make copies of current and prior rules, filed in accordance with the provisions of this Article, available to the public at a cost to be determined by him.

(c) Within 50 days of the acceptance by the chief hearing officer of a rule for filing, the agency filing the rule:

(1) Shall publish the rule as prescribed in any applicable statute; and

(2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule.

The rule so published or distributed shall contain the legend: 'The form of this rule may be revised by the chief hearing officer pursuant to the provisions of G.S. 150B-61.'

150B-63. Publication of;  
executive orders and rules; the  
North Carolina Register

--(a) The chief hearing officer of the Office of Administrative Hearings shall compile, index and publish executive orders of the Governor and all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the chief hearing officer determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after July 1, 1985, the chief hearing officer shall publish, in print or other form, a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually or more frequently in the discretion of the chief hearing officer. Recompilations shall be made in the chief hearing officer's discretion.

(d1) The chief hearing officer shall also publish at periodic intervals, but not less often than once each month, the North Carolina Register which shall contain information relating to agency, executive, legislative or judicial actions that are performed under the authority of, or are required by, or are issued to interpret, or that otherwise affect, this Chapter.

(d2) In publishing proposed amendments to rules, the chief hearing officer shall show the portion of the rule being amended as it is to the degree necessary to provide adequate notice of the nature of the proposed amendment, with changes shown by striking through portions to be deleted and underlining portions to be added.

(e) Reference copies of the compilation, supplements, and recomputations of the rules, and the North Carolina Register shall be distributed by the chief hearing officer as soon after publication as practicable, without charge, to the following officials and departments:

(1) One copy to each county of the State, which copy may be maintained for public inspection in the county in a place determined by the county commissioners; one copy each to the clerk of the Supreme Court of North Carolina and the clerk of the North Carolina Court of Appeals; one copy each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals; one copy to the office of the Governor; and five copies to the Legislative Services Commission for the use of the General Assembly;

(2) One copy to each State official and department to which copies of the appellate division reports are furnished under G.S. 7A-343.1;

(3) Five copies to the Division of State Library of the Department of Cultural Resources, pursuant to G.S. 147-50.1; and

(4) One copy of the North Carolina Register to each member of the General Assembly.

(f) The chief hearing officer shall make available copies of the compilation, supplements and recomputations of the rules and the North Carolina Register to other persons at a price determined by him to cover publication and mailing costs. All monies received by the Office of Administrative Hearings pursuant to this section from the sale of copies of said publications shall be deposited in the State treasury in a special funds account to be held in trust for the Office of Administrative Hearings to defray the expense of future recompilation, publication, and distribution of such documents. All monies involved shall be subject to audit by the State Auditor.

(g) Notwithstanding any other provision of law, the Employment Security Commission shall, within 15 days of adoption, file all rules adopted by it with the chief hearing officer for public inspection and publication purposes only. The chief hearing officer shall compile, make available for inspection, and publish the rules filed under this subsection in the same manner as is provided for other rules.

150B-63.1.  
Administrative Rules Review  
Commission reports

--The chief hearing officer of the Office of Administrative Hearings shall retain any

reports of the Administrative Rules Review Commission's objection to a rule. He shall append to any compilation, publication, or summation of that rule a notation that it has been objected to pursuant to G.S. 143A-55.3 or 143A-55.4 and, where applicable, that the objection has been removed.

150B-64. Judicial and official notice

--Judicial or official notice shall be taken of any rule effective under this Article.

GENERAL STATUTES OF NORTH  
CAROLINA  
CHAPTER 7A, SUBCHAPTER XII  
ADMINISTRATIVE HEARINGS  
Office of Administrative  
Hearings.

7A-750. Creation; status; purpose

--There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III, Section 11 of the Constitution and, in accordance with Article IV, Section 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it is created. The Office of Administrative Hearings is established to provide a source of independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process. It shall also maintain dockets and records of contested cases and shall codify and publish all administrative rules.

7A-751. Director; powers and duties. --The head of the Office of Administrative Hearings is the Director. He shall serve as the chief hearing officer of the Office of Administrative Hearings and shall have the powers and duties conferred on him by this Chapter and the Constitution and laws of this State.

The Office of Administrative Hearings is designated the official deferral agency under Section 706 of the Civil Rights Act of 1964, as amended, for all charges filed on a timely basis with the Equal

Employment Opportunity Commission by any State or local government employee covered under Chapter 126 of the General Statutes. The Office of Administrative Hearings may contract with the Equal Employment Opportunity Commission to become a 706 deferral agency and may conduct necessary investigations and informal hearings or fact-finding proceedings. The Office of Administrative Hearings may prepare investigation reports with the findings, conclusions, and determinations of probable cause that a 706 deferral agency is required to make and may take other actions required for it to function as a 706 deferral agency for State and local employees covered under Chapter 126 of the General Statutes. Proceedings conducted by the Office of Administrative Hearings as a 706 deferral agency are not contested cases as defined in G.S. 150B-2(2).

7A-752. Director; appointments; vacancy

--The Director of the Office of Administrative Hearings shall be appointed by the Chief Justice for a term of office of four years. The first chief hearing officer shall be appointed as soon as practicable for a term to begin on the day of his appointment and to end on June 30, 1939. Successors to the first chief hearing officer shall be appointed for a term to begin on July 1 of the year the preceding term ends and to end on June 30 four years later. A chief hearing officer may continue to serve beyond his term until his successor is duly appointed and sworn, but any holdover shall not affect the expiration date of the succeeding term.

If the Director is absent or unable to serve temporarily for any reason, the senior hearing officer present may perform the duties of Director and chief hearing officer. Seniority among hearing officers shall be determined by length of service as hearing officer, date of admission to practice law in the General Court of Justice, and age, in that order.

7A-753. Additional hearing officers; appointment; specialization

--The Director shall appoint five additional hearing officers to serve in the Office of Administrative Hearings.



The Director may, with the approval of the Chief Justice, designate certain hearing officers as having the experience and expertise to preside at specific types of contested cases and assign only these designated hearing officers to preside at those cases.

7A-754. Qualifications: standards of conduct; off. removal

--Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the Director and chief hearing officer or as a hearing officer in the Office of Administrative Hearings. Neither the chief hearing officer nor any hearing officer may engage in the private practice of law as defined in G.S. 84-2.1 while in office; violation of this provision shall be grounds for removal. Each hearing officer shall take the oaths required by Chapter 11 of the General Statutes. A hearing officer may be removed from office by the Director of the Office of Administrative Hearings for just cause, as that term is used in G.S. 126-35.

7A-755. Expenses reimbursed

--The Director of the Office of Administrative Hearings and all hearing officers shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 133-6(a).

7A-756. Power to administer oaths and issue subpoenas

--The chief hearing officer and all hearing officers in the Office of Administrative Hearings may, in connection with any pending or potential contested case under Chapter 150B:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the Office of Administrative Hearings requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence; and

(3) Apply to the General Court of Justice, Superior Court Division, for any order necessary to enforce the powers conferred in this Article.

7A-757. Temporary hearing officers; appointments; powers and standards; fees

--When regularly appointed hearing officers are unavailable, the Director of the Office of Administrative Hearings may contract with qualified individuals to serve as hearing officers for specific assignments. A temporary hearing officer shall have the same powers and adhere to the same standards as a regular hearing officer in the conduct of a hearing. These temporary hearing officers shall not be employees of the State but shall be remunerated for their service at a rate not to exceed three hundred dollars (\$300.00) per day and shall be reimbursed for travel and subsistence expenses at the rate allowed to State officers and employees by G.S. 133-6(a).

7A-758. Availability of hearing officer to exempt agencies

--The Director of the Office of Administrative Hearings may, upon request of the head of the agency, provide a hearing officer to preside at hearings of public bodies not otherwise authorized or required by statute to utilize a hearing officer from the Office of Administrative Hearings including, but not limited to, State agencies exempt from the provisions of Chapter 150B, municipal corporations or other subdivisions of the State, and agencies of such subdivisions.

## EXECUTIVE ORDERS

### EXECUTIVE ORDER NUMBER 1 NORTH CAROLINA BOARD OF ETHICS JANUARY 31, 1985

WHEREAS, public office in North Carolina must always be regarded as a public trust; and

WHEREAS, the people of North Carolina have a fundamental right to the assurance that officers of their government will not use their public position for personal gain; and

WHEREAS, this Administration is committed to restore and maintain the confidence of North Carolina citizens in their government; and

WHEREAS, there is a need in North Carolina for the creation of an institutionalized procedure designed to prevent the occurrence of conflicts of interest in government and to deal with them when they do occur; and

WHEREAS, this Administration realizes that the vast majority of state government employees are honest and hard working in their public and private lives;

NOW, THEREFORE, IT IS HEREBY ORDERED:

Section 1. Executive Order Number 1, January 10, 1977. Executive Order Number 1, dated January 10, 1977, is hereby rescinded. All records, including but not limited to Statements of Economic Interest, of the North Carolina Board of Ethics created pursuant to said executive order, are transferred to the North Carolina Board of Ethics herein.

Section 2. North Carolina Board of Ethics. There is hereby established the North Carolina Board of Ethics consisting of five persons to be appointed by the Governor to serve at his pleasure. The Governor shall, from time to time, designate one of the members as Chairman. The members shall receive no compensation, but shall receive reimbursement for any necessary expenses incurred in connection with the performance of their duties pursuant to General Statute 138-15. The Board of Ethics shall not be considered a public office for the purpose of dual office holding.

Section 3. Persons subject to Order. The following persons

are subject to this order and to the jurisdiction of the Board of Ethics:

(a) All employees in the Office of the Governor.

(b) The heads of all principal departments of state government who are appointed by the Governor.

(c) The chief deputy or chief administrative assistant to each of the aforesaid heads of principal state departments.

(d) All "confidential" assistants or secretaries to the aforesaid department heads (or to the aforesaid chief deputies and assistants of department heads) as defined in G.S. 126-5(b)(2).

(e) All employees in policy-making positions as designated by the Governor pursuant to the State Personnel Act as defined in G.S. 126-5(b)(3), and all "confidential" secretaries to these individuals as defined in G.S. 126-5(b)(4).

(f) Any other employees in the principal departments of state government, except in those principal departments headed by elected heads other than the Governor, as may be designated by rule of the Board subject to the approval of the Governor, to the extent such designation does not conflict with the State Personnel Act.

(g) The members of all commissions, boards and councils appointed by the Governor, with the exception of members of those commissions, boards and councils the Board of Ethics determines perform solely advisory functions.

(h) The elected heads of other principal state departments, and certain employees of those departments as designated by the head, in the event of an election by such department head to participate in the system created by this Order as provided for in Section 8 of this Order.

(i) Members of North Carolina Board of Ethics.

Section 4. Exemption From Order. Notwithstanding Section 3, herein, a commission, board or council to which the Governor appoints members, may upon written application request the Board of Ethics to exempt its members from this Order. The Board of Ethics shall make a determination upon such requests, which shall be final, after a specific finding by the Board that such exemption does not violate the intent of this

Order in no way interferes or conflicts with the proper and effective discharge of the official duties of the members of the commission, board or council making the request. The determination of the Board of Ethics in every such case shall be made available for public inspection at a convenient location.

#### Section 5. Specific Prohibitions

(a) No person subject to this Order shall engage in any activity which interferes or is in conflict with the proper and effective discharge of such person's official duties.

(b) No person who is employed by the state in a full-time position and who is subject to this Order, shall hold any other public office or public employment for which compensation, direct or indirect, is received except under circumstances and in the manner approved by the Board upon review of a written request pursuant to Board procedures;

(c) No person subject to this Order shall solicit in their official capacity and gratuity or other benefits for themselves from any other person under any circumstances.

Any exception to the foregoing prohibitions granted by the Board, may only be allowed by the Board upon written application to the Board, and after a specific finding by the Board that such activity does not violate the intent of this Order and in no way interferes or conflicts with the proper and effective discharge of the official duties of the person making the request. The Board shall make a determination in each such case, which shall be final. The determination of the Board in every such case shall be made available for public inspection at a convenient location.

#### Section 6. Statements of Economic Interest.

(a) Within thirty days from commencement of state service or the effective date of this Order, whichever is later, and thereafter between April 15 and May 15 of each succeeding year, each of the following persons subject to this Order shall file with the Board a sworn Statement of Economic Interest:

(i) Each person appointed by the Governor and subject to this Order;

(ii) Each person subject to this Order, whether or not appointed by the Governor, who receives \$30,000 or more from the state;

(iii) Each person subject to this Order, irrespective of the amount of compensation received, whose position is subject to undue influence (as determined from time to time by the Board);

(iv) Each person designated by the elected head of a principal department of state government pursuant to Section 8 of this order;

(v) Statements filed by members of the Board of Ethics shall be filed with the Governor and shall be made public.

(b) The Statement of Economic Interest shall contain:

(i) The name, home address, occupation, employer and business address of the person filing.

(ii) A list of all assets and liabilities of the person filing which exceed a valuation of \$5,000. With respect to each asset and liability listed, the specific valuation need not be set forth, but there should be an indication as to whether the valuation of each asset or liability exceeds \$10,000. This list shall contain, but shall not be limited to, the following:

(A) All real estate, with specific description adequate to determine the location of each parcel;

(B) The name of each publicly-owned company (companies which are required to register with the Securities and Exchange Commission) in which securities are owned, with an indication as to whether the valuation of the securities owned in each company listed exceeds \$10,000.

(C) The name of each non-publicly-owned company or business entity in which securities or other equity interests are owned, and an indication as to whether the valuation of the securities or equity interest owned in each such company or business entity listed exceeds \$10,000.

(D) With respect to the aforesaid non-publicly-owned company or business entities in which the interest of the person filing exceeds a valuation of \$10,000, if any such companies or business entities own securities or equity interests in other companies or business



entities, the name of each such other company or business entity should be listed if the securities or other equity interests in them held by the aforesaid non-publicly-owned company exceed a valuation of \$10,000.

(E) If the person filing or his or her spouse or dependent children are the beneficiary of a trust created, established or controlled by the person filing, which holds assets, and if those assets are known, the name of each company or other business entity in which securities or other equity interests are held by the trust should be listed, with an indication as to whether the valuation of the securities or equity interest held in each such company or business entity listed exceed \$10,000, and with the name and address of the trustee and a description of the trust. If any of the aforesaid assets are securities or other equity interests in a corporation or other business entity, each such corporation or business entity should be listed separately by name. If the assets held by such a trust and the name and address of the trustee should be provided.

(F) A list of all other assets and liabilities which exceed a valuation of \$5,000 (including bank accounts and debts), with an indication as to whether each asset and liability exceeds a valuation of \$10,000.

(iii) A list of all sources (not specific amounts) of income (including capital gains) shown on the most recent federal and state income tax returns of the person filing where \$5,000 or more was received from such source.

(iv) If the person filing is a practicing attorney, check each category of legal representation in which the person filing, and/or his or her law firm has, during any single year of the past five years, earned legal fees in excess of five thousand dollars (\$5,000) from any of the following categories of legal representation:

- Criminal law
- Utilities regulation or representation of regulated utilities
- Corporation law
- Taxation
- Decedent's estates
- Labor law
- Insurance law

- Administrative law
- Real property
- Admiralty
- Negligence (representing plaintiffs)
- Negligence (representing defendants)

(v) A list of all business with which, during the past five years, the person filing has been associated, indicating the timeperiod of such association and the relationship with each business as an officer, employee, director, partner or a material owner of a security or other equity interest and indicating whether or not each does business with or is regulated by the state and the nature of the business, if any, done with state.

(vi) In all statements of economic interest after the first one filed by an individual, a list of all gifts of a value of more than \$100.00 received during the twelve months preceding the date of the Statement of Economic Interest from sources other than relatives of the person filing and his or her spouse, and a list of all gifts, of value of more than \$50.00 received from any source having business with or regulated by the state.

(vii) Other information as may be deemed necessary to effectuate the purpose of this Order, as provided for by rule of the Board.

(viii) A statement setting forth any other information or relationship which the person filing believes may relate to any actual or potential conflict of interest he or she may have as an employee of state government.

(ix) A sworn certification by the person filing that he or she has read the Statement of Economic Interest, and that to the best of his or her knowledge and belief it is true, correct, complete and that he or she has not transferred and will not transfer any asset, interest or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(c) The person filing a Statement of Economic Interest shall list as specified in Section 6(b) the assets, liabilities, and sources of income of his or her spouse which are derived from the assets or income of the person

filing, controlled by the person filing, or for which the person filing is jointly or severally liable.

(d) Any person required to file a Statement of Economic Interest or his or her spouse may request the Board to delete an item, which may be deleted by the Board pursuant to a written request, but only upon a finding that it is of a confidential nature, does not in any way relate to the duties of the position held or to be held by such person and does not create an actual or potential conflict of interest.

(e) The Board of Ethics shall issue a form for such Statements of Economic Interest, which in no event shall be later than February 15, 1985.

(f) After review and evaluation by the Board, the Statements of Economic Interest will be made available by the Board for public inspection.

Section 7. Duties of Board of Ethics.

(a) The Board shall review all Statements of Economic Interest submitted to it to determine their conformity with the terms of this Order and the Board's rules, and to evaluate the financial interests of the person filing to determine whether there appears to be actual or potential conflicts of interest. The Board shall submit a written report of each such evaluation to the Official responsible for making the appointment of the person filing, and to the Governor, unless the person is an employee of one of the other principal departments of state government listed in Section 8 of this Order, in which case a copy of the written report shall be sent to the elected head of that department. The Board may recommend remedial action with respect to any problem which is apparent from any Statement.

(b) The Board shall evaluate all claims of privacy made concerning a portion of a Statement of Economic Interest, prior to making the Statement available for public inspection, and the decision of the Board in these matters shall be final.

(c) The Board shall provide by rule for the time, place and manner of convenient public inspection of the Statements of Economic Interest.

(d) The Board shall promulgate readily understandable rules, forms and procedures to carry out the

purposes of this Order and shall publish them.

(e) The Board shall render opinions and determinations on matters pertaining to the interpretation and application of this Order.

(f) The Board shall provide reasonable assistance to all persons subject to this Order in complying with the terms of this Order.

(g) The Board shall receive information from the public concerning potential conflicts of interest and make necessary investigations. The Board shall promulgate rules to protect all employees from specious and unfounded claims and damage to their reputations which could result from such claims. The Board also shall promulgate rules to protect employees from any direct or indirect reprisals from any source resulting from efforts to inform the Board of the existence of potential or actual conflicts of interest in state government. The Board also shall promulgate rules providing for full and fair consideration of the merits of all complaints received which rules shall assure that the rights of all parties involved in the investigation are protected. All complaints and allegations concerning actual or potential conflicts of interest to be considered by the Board must contain the name, address, telephone number and oath of the individual filing such complaint or making such allegation. The Board shall prepare a report of each such investigation and forward a copy to the official responsible for making the appointment of the person investigated, and to the Governor, unless the person investigated is an employee of one of the other principal departments of state government listed in Section 8 of this Order, in which case a copy of the written report shall be sent to the elected head of that department. The Board may recommend remedial action with respect to any problem revealed by such an investigation.

(h) The Board shall request, when necessary to accomplish the purposes of this Order, additional information from persons covered by this Order.

(i) The Board shall meet regularly, at the call of the Chairman, to carry out its duties.

(j) The Board shall submit a report annually to the Governor on their activities and generally on the subject of public disclosure, ethics and conflicts of interest, including recommendations for administrative and legislative action.

(k) The Board shall perform such other duties as may be necessary to accomplish the purposes of this Order.

Section 8. Other Principal Departments of State Government. The elected heads of other principal departments of the state government (Office of the Lieutenant Governor, Departments of the Secretary of State, State Auditor, State Treasurer, Public Education, Justice, Agriculture, Labor and Insurance) and the University of North Carolina Board of Governors may, and hereby are invited to, join in the effort represented by this Order by providing the Chairman of the Board of Ethics with a written notice of their election to have the terms of this Order apply to those employees under their jurisdiction (who are not covered by the State Personnel Act), and with a list of the employees under their jurisdiction who will be asked to submit a Statement of Economic Interest. All services of the Board available to the Governor under this Order shall be available to each of the heads of the aforesaid departments so electing, and all of the services of the Board available to employees under this Order shall be available to employees brought within the coverage of this Order in this manner.

Section 9. Sanctions. The failure to any employee to make timely filing of a required document, the making of a false or misleading statement or an omission in a document, the failure to cooperate with the Board of Ethics and the failure to comply with the terms of this Order, shall be grounds for disciplinary action, including discharge.

Section 10. Board Offices. The Board of Ethics and its staff, for administrative purposes only, shall be located in the Department of Administration.

Done in Raleigh, North Carolina, this the 31st day of January in the year of our Lord, one thousand nine hundred eighty-five.

## EXECUTIVE ORDER NO. 2 GOVERNOR'S EFFICIENCY STUDY COMMISSION

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

### Section 1. ESTABLISHMENT

(a) There is established a Governor's Efficiency Study Commission composed of members appointed by the Governor from among citizens in private sector business, industry, and professions of the State.

(b) Thomas I. Storrs of Charlotte shall be Chairman and Gregory Poole, Jr. of Raleigh shall be Vice-Chairman of the Commission.

### Section 2. FUNCTIONS

(a) The commission shall conduct a private sector study of efficiency in the State Government and shall advise the Governor, and other State Government department and agency heads with respect to improving management and reducing costs.

(b) In fulfilling its undertaking the commission shall make recommendations containing:

(1) Opportunities for increased efficiency and reduced costs in State Government that can be realized by Executive action and legislation;

(2) Areas where managerial accountability can be enhanced and administrative control can be improved;

(3) Opportunities for managerial improvements over both the short and long term;

(4) Specific areas where further study can be justified by potential savings; and

(5) Information and data relating to governmental expenditures, indebtedness, and personnel management.

### Section 3. ADMINISTRATION

(a) The heads of the State departments and agencies shall, to the extent permitted by law, provide to the commission, its consultants and its staff such information as may be required or desired by the commission in carrying out the purposes of this Order.

(b) Members of the Commission shall serve without compensation.

(c) The Office of the Governor shall, to the extent permitted by law and subject to the availability of funds, provide the commission with such facilities, services and other support as it may require for



carrying out the purpose of this order.

(d) The commission shall be funded, staffed and equipped, by contributions received by it from the private sector and without cost to the state government.

#### Section 4. REPORT OF RECOMMENDATIONS

(a) The commission will present its recommendations to the Governor and the Office of Budget and Management by no later than September 13, 1985.

#### Section 5. IMPLEMENTATION

(a) The Office of Budget and Management shall review the recommendations made by the commission and recommend to the Governor ways and means for implementing the same. Such recommendations as are approved by the Governor shall be implemented by the Office Budget of Management when, and to the extent, directed by the Governor.

#### Section 6. PRIOR ORDERS

(a) All prior Executive Orders or portions of prior Executive Orders inconsistent herewith are hereby repealed.

This Order is effective this 12th day of February, 1985.

#### EXECUTIVE ORDER NO. 3 NORTH CAROLINA ADVISORY COUNCIL ON VOCATIONAL EDUCATION

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED: Section 1. ESTABLISHMENT

(a) There is established the North Carolina Advisory Council on Vocational Education, (hereinafter referred to as the "Council") to act as the State Council on Vocational Education in accordance with the requirements of Section 112 of Public Law 98-524 enacted by the United States Congress and known as the "Carl D. Perkins Vocational Educational Act," (hereinafter referred to as the "Act.")

(b) The members of this Council shall consist of those persons appointed by the Governor of North Carolina and certified to the United States Secretary of Education each year, who, to the best of the Governor's knowledge and belief, meet the qualifications specified in the Act.

#### Section 2. FUNCTIONS

The Council shall meet, select a chairman and perform responsibilities and duties as

prescribed by and limited to the requirements of the Act.

#### Section 3. ADMINISTRATION

(a) The State of North Carolina and all its constituent departments and agencies shall cooperate with the Council including providing appropriate office space and support services to assist the Council in carrying out its duties as specifically set out in the Act, as amended.

#### Section 4. EXECUTIVE ORDER NUMBER 25 RESCINDED

Executive Order Number 25, dated May 25, 1978, is hereby rescinded. All records of the North Carolina Advisory Council on Education created pursuant to said executive order, are transferred to the Council created herein. The Council herein shall be the successor to the North Carolina Advisory Council on Education.

This Order is effective this twenty-seventh day of March, 1985.

#### EXECUTIVE ORDER NO. 4 RESCENSION OF EXECUTIVE ORDER NO. 97

DATED SEPTEMBER 7, 1983,  
RESTORING  
REVIEW OF DISABILITY PROCEDURES

By authority vested in me as Governor by the Constitution and laws of North Carolina it is ordered:

(1) Executive Order No. 97 executed on September 7, 1983, is rescinded.

(2) Secretary of the Department of Human Resources is directed to end the moratorium on the processing of claims forwarded by the Social Security Administration.

This Order is effective this 10th day of May, 1985.

#### EXECUTIVE ORDER NO. 5 GOVERNOR'S COMMISSION ON CHILD VICTIMIZATION

The safety of our State's young people is in jeopardy because of the increasing threats of child abuse, neglect and exploitation; and the increasing numbers of runaways, throwaways, parental kidnappings and stranger abductions:

The State of North Carolina must consider strong measures designed to protect our children;

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

## Section 1. ESTABLISHMENT

I hereby establish the Governor's Commission on Child Victimization, which shall be established under the office of the Governor. The Commission shall be composed of at least fifteen and not more than thirty members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate one of the members as Chairman. The members appointed by the Governor will be representative of the following areas:

(1) State departments currently involved in education, safety, delinquency prevention and intervention services for children and youth;

(2) Private business and community leaders;

(3) Law enforcement;

(4) The judicial system;

(5) Private citizens or volunteers who have developed or implemented model youth programs within the State.

## Section 2. FUNCTIONS

(a) The Commission shall meet regularly at the call of the Chairman, and may hold special meetings at any time at the call of the Chairman or the Governor. The Commission is authorized to conduct public hearings.

(b) The Commission shall have the following duties:

(1) Encourage private sector involvement and help coordinate private groups and business activity in the prevention of the victimization of youth and children.

(2) Coordinate the various state agencies dealing with the victimization of children in order to create an overall program without duplicating effort.

(3) Consider new prevention programs for North Carolina.

(4) Review existing State and local programs in North Carolina which address the prevention of the victimization of children;

(5) Review the General Statutes of North Carolina applicable to children and youth;

(6) Review proposals and model prevention programs in other states;

(7) Other duties as assigned by the Governor.

## Section 3. ADMINISTRATION

In support of the Commission, a staff of three will be created:

(a) Executive Director, Public Information Administrator and Administrative Secretary. Funds shall be authorized and made available by the Governor's Crime Commission.

(b) Members of the Commission may be reimbursed for necessary travel and subsistence expenses as authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Governor's Crime Commission.

## Section 4. IMPLEMENTATION AND DURATION

(a) This order shall be effective immediately.

(b) The Commission shall dissolve at the pleasure of the Governor, but no later than September 30, 1986.

This Order is effective this twentieth day of May, 1985.

## EXECUTIVE ORDER NO. 6 STATE EMPLOYEES' WORK PLACE REQUIREMENTS FOR SAFETY AND HEALTH

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ordered:

### Section 1. ESTABLISHMENT

(a) There is established a State Employees' Work Place Requirements Program for Safety and Health for North Carolina to meet its loss prevention responsibilities and provide safe and healthful conditions of employment in all areas of the State. Employees subject to the State Personnel Act will be covered by this program as well as those employees exempt from the State Personnel Act.

(b) The State Personnel Director is responsible for developing a program which shall include, but not be limited to, concerns for:

(1) protecting employees from job related injuries or health impairment;

(2) preventing accidents and fires;

(3) emergency medical procedures and emergency plans;

(4) monitoring industrial hygiene, housekeeping and sanitation; and

(5) utilizing available resources within State Government and elsewhere to inform and educate personnel in all areas of preventive health, safety, personal security, personal care, and other individual responsibilities.

### Section 2. FUNCTIONS

(a) The State Personnel Director shall develop a comprehensive State Employees' Work Place Requirements Policy and Program for recommendation to the State Personnel Commission on or before September 15, 1985.

(b) Upon approval by the State Personnel Commission, the State Personnel Director shall implement and maintain the State Employees' Work Place Requirements Program which will be expanded to cover employees exempt from the State Personnel Act.

(c) The State Employees' Work Place Requirements Program shall reflect fundamental safety and health principles. The Program is to be designed to serve as a model to assist agency heads in meeting their legal safety and health responsibilities under General Statutes 95-148.

### Section 3. ADMINISTRATION

(a) Each agency head shall designate one employee as Safety Officer to be responsible for implementation of the State Employees' Work Place Requirements Program within the agency and development of additional safety and/or health procedures necessary to meet special situations that are unique to a particular agency. The names of these individuals are to be forwarded to the State Personnel Director within 30 days from the date of this order.

(b) The State Personnel Director shall be responsible for establishing lines of communication between the individuals named by the agency heads and forming a "Safety Network" within State Government. The Director shall also be responsible for coordinating needed training and technical assistance with the Occupational Safety and Health Division of the North Carolina Department of Labor, Health Services Division of the Department of Human Resources, North Carolina Industrial Commission and other technical resources of the State.

(c) Those agencies with existing safety and health programs and safety staff already in place are to review both sets of regulations to ascertain that the provisions of the State Employees' Work Place Requirements Program are covered by their existing programs, and if not, to make necessary modifications.

### Section 4. REPORTS AND RECORDS

(a) The State Personnel Director shall communicate with the Governor and the agency heads on the implementation and ongoing results of the Work Place Requirements Program and provide an annual analysis of injury and compensation statistics.

(b) In accordance with General Statute 95-148, agency heads shall consult with the Commissioner of Labor regarding record keeping and shall make an annual report to the Commissioner of Labor with respect to occupational accidents and injuries.

### Section 5. PRIOR ORDERS

All prior Executive Orders or portions of prior Executive Orders inconsistent are hereby repealed.

This Order is effective the 20th day of May, 1985.

### EXECUTIVE ORDER NUMBER 7 WOMEN'S ECONOMIC DEVELOPMENT ADVISORY COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby create and establish the North Carolina Women's Economic Development Advisory Council. This Council will be composed of at least twelve (12) members who have distinguished themselves by their accomplishments in the private sector. The membership of this Council will, to the extent practical, contain representatives from all major geographic areas of the State.

The members of this Council will be appointed by the Governor and will serve at the pleasure of the Governor.

Section 2. The Governor shall designate a Chairman from the membership of the Council. The Council will meet at the call of the Chairman or the Secretary of Administration.

Section 3. The Women's Economic Development Advisory Council will have the duty to thoroughly explore opportunities for women in our economy; carefully evaluate those opportunities; and advise the Secretary of Administration and the Secretary of Commerce on strategic courses of action, consistent with the State's economic development philosophy, which will best promote and encourage equal opportunity and the advancement and integration



of women into all aspects of North Carolina's economy.

Section 4. The Department of Administration shall provide the administrative support for this Council.

Section 5. Members of the Women's Economic Development Advisory Council shall be entitled to reimbursement for subsistence and travel expenses as may be generally authorized for members of State Boards and Commissions.

Section 6. This Executive Order is effective immediately and shall remain in effect until June 30, 1987, or unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the twenty-eighth day of June 1985.

**EXECUTIVE ORDER NUMBER 8  
GOVERNOR'S ADVISORY COMMITTEE ON  
TRAVEL AND TOURISM**

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby establish the Governor's Advisory Committee on Travel and Tourism.

Section 2. The Governor shall appoint at least 15 persons to serve on the Advisory Committee. Those persons appointed shall be representative of the various elements of travel and geographic regions of the state. The Governor shall designate the Chairman of the Advisory Committee. All members shall serve at the pleasure of the Governor.

Section 3. The Committee shall meet on a quarterly basis or as directed by the Governor or the Secretary of Commerce.

Section 4. The Committee shall perform such duties as assigned by the Governor and shall work closely and in coordination with the Travel and Tourism Committee of the North Carolina Economic Development Board of the Department of Commerce.

Section 5. While on official business, members of the Committee shall be entitled to such per diem and reimbursement for travel and subsistence as may be authorized for members of State Boards and Commissions generally. The Secretary of the Department of Commerce shall provide funds for this purpose.

Section 6. Executive Order Number 46, dated March 14, 1980, is hereby rescinded. All records of the Governor's Advisory Committee on Travel and Tourism created pursuant to said executive order, are transferred to the Advisory Committee created herein. The Advisory Committee herein shall be the successor to the Governor's Advisory Committee on Travel and Tourism.

Section 7. This Executive Order is effective immediately and shall remain in effect until June 30, 1987, unless terminated earlier or extended by further Executive Order.

**EXECUTIVE ORDER NUMBER 9  
NORTH CAROLINA PUBLIC  
TRANSPORTATION ADVISORY COUNCIL**

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. There is hereby created and established the North Carolina Public Transportation Advisory Council. The Advisory Council will be composed of twenty-one members: one member from each of the fourteen highway divisions, five at large members, and the Secretary of the Department of Human Resources and the Department of Transportation. The Governor shall appoint the nineteen lay members to serve at the pleasure of the Governor who shall represent a cross section of transportation interests. The Secretary of Transportation shall chair the Advisory Council.

Section 2. The Advisory Council shall have the following duties:

(1) To review and make recommendations to the Interagency Transportation Review Committee concerning guidelines and criteria for the Review Committee;

(2) To review and make recommendations to the funding agencies concerning project situations when there are unresolved problems between the Review Committee and the applicant or other local interests;

(3) To advise and make recommendations to the Board of Transportation concerning public transportation policy and expenditure of state and federal funds for public transportation; and

(4) To develop transportation policies which

are consistent with promoting balanced economic growth.

Section 3. There is hereby created the North Carolina Interagency Transportation Review Committee. The Review Committee will be composed of Representatives from the Departments of Education, Human Resources, Natural Resources and Community Development, and Transportation. The Secretaries of the respective departments shall appoint a representative and an alternate from their departments who shall represent each funding agency. The Director of the Public Transportation Division shall chair the Review Committee.

Section 4. The Review Committee shall have the following duties:

(1) To implement policy and apply criteria as developed by the Advisory Council;

(2) To provide written notice of recommendations based upon review of applications or plans to the appropriate state agency; and

(3) To review all transportation components of applications or plans requesting transportation funding when the funds are administered by a state agency.

Section 6. The Secretary of Transportation, after conferring with the appropriate departmental secretaries, shall have the final authority on all transportation funding decisions.

Section 7. To further the objectives of this Executive Order, all departments and agencies under the Governor's Jurisdiction shall immediately draft directives and procedures necessary to implement these policies. Such drafts shall be submitted to the Secretary of Transportation for review and approval within 60 days of the signing of this Executive Order.

Section 8. Every agency within State Government within my authority is hereby directed to cooperate with the Council and Committee in providing all necessary information regarding their activities, and to disseminate the departmental directives and procedures within the agency which are necessary to implement this Executive Order.

Section 9. Executive Order Number 29, dated December 6, 1978 is hereby rescinded. All records of the North Carolina

Public Transportation Advisory Council created pursuant to said executive order, are transferred to the Council created herein. The Council herein shall be the successor to the North Carolina Public Transportation Advisory Council.

Section 10. This Order shall be effective immediately and shall remain in effect until June 30, 1987, unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the twenty-eighth day of June, 1985.

#### EXECUTIVE ORDER NUMBER 10 NORTH CAROLINA SMALL BUSINESS COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby establish the North Carolina Small Business Council. The Council shall be composed of at least 20 members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate one of the members as Chairman.

Section 2. The Council shall meet at least once in each quarter and may hold special meetings at any time at the call of the Chairman, the Governor or the Secretary of Commerce.

Section 3. The members of the Council shall not receive any compensation, per diem, or reimbursement for travel and subsistence expenses for their services.

Section 4. Purposes of the Council. The purposes of the North Carolina Small Business Council are as follows:

(A) To prepare and present recommendations to the Governor and General Assembly for changes in statutes, rules and regulations, including the state tax structure, which affect small businesses in North Carolina.

(B) To make recommendations to the Governor and General Assembly for new legislation, agency programs and other actions needed to assist small business growth and development.

(C) To assist the Small Business Development Section of the Business Assistance Division of the Department of Commerce in determining the need for programs for small businesses in

education, training, marketing, funding resources, technological assistance and related areas.

(D) The Council is authorized to conduct interviews and solicit non-confidential information to carry out the provisions of (A), (B) and (C) above.

Section 5. The Small Business Development Section of the Business Assistance Division of the Department of Commerce shall provide staff and support services for the Council.

Section 6. It shall be the responsibility of each Cabinet Department Secretary to make every reasonable effort for his or her department to cooperate with the North Carolina Small Business Council to carry out the provisions of this Order.

Section 7. The elected heads of the Council of State Departments are encouraged and invited to join in the provisions of this Order. All services of the Council available to the Governor and his Cabinet under this Order shall be available to each of the heads of the Council of State Departments electing to participate.

Section 8. Executive Order Number 51, dated May 16, 1980, is hereby rescinded. All records of the North Carolina Small Business Advocacy Council created pursuant to said executive order, are transferred to the Council created herein. The Council herein shall be the successor to the North Carolina Small Business Advocacy Council.

Section 9. This Order shall be effectively immediately and shall remain in effect until June 30, 1987, unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this twenty-eighth day of June, 1985.

AMENDMENT TO EXECUTIVE ORDER  
NUMBER 10  
NORTH CAROLINA SMALL BUSINESS  
COUNCIL

By The authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. Lines 1 and 2 of Subparagraph (C) of Section 4 of Executive Order Number 10 are amended by deleting the words "Small Business Development Section of the Business Assistance Division" and inserting in lieu thereof "Small Business Development Division"

and lines 1 and 2 of Section 5 of Executive Order Number 10 are amended by deleting the words "Small Business Development Section of the Business Assistance Division" and inserting in lieu thereof "Small Business Development Division."

Section 2. This amendment is made because the Business Assistance Division previously described has been replaced by the Small Business Development Division.

This action effective the 25th day of July, 1985.

EXECUTIVE ORDER NUMBER 11  
GOVERNOR'S ADVISORY COMMISSION  
ON MILITARY AFFAIRS

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby establish the Governor's Advisory Commission on Military Affairs. The Commission shall be comprised of at least twenty-five (25) members appointed by the Governor to serve for a term of two (2) years. Membership shall consist of active and retired military personnel, State and local government officials and local citizens who have an interest in or relationship to the military community. The Governor shall designate one of the members as Chairman.

Section 2. The Commission shall meet regularly at the call of the chairman and may hold special meetings at any time at the will of the Chairman or the Governor or the Secretary of Crime Control and Public Safety. Support staff for the Commission shall come from the Department of Crime Control and Public Safety.

Section 3. The Commission shall have the following duties:

(a) Provide a forum for the discussion issues concerning major military installations in the State, active and retired military personnel and their families.

(b) Formulate goals and objectives which enhance cooperation and understanding between the military components, the communities, State and local governments, and the general public.

(c) Collect and study information related to supporting and strengthening the military presence within the State.



(d) Review proposed military affairs legislation.

(e) Advise the Governor on measures and activities which would support and enhance defense installations and military families within the State.

Section 4. Executive Order Number 80, dated April 30, 1982, is hereby rescinded. All records of the Governor's Advisory Commission on Military Affairs created pursuant to said executive order, are transferred to the Commission created herein. The Commission herein shall be the successor to the Governor's Advisory Commission on Military Affairs.

Section 5. This Order shall be effective immediately and shall remain in effect until June 30, 1987, unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the twenty-eighth day of June, 1985.

#### EXECUTIVE ORDER NUMBER 12 GOVERNOR'S HIGHWAY SAFETY COMMISSION

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby establish the Governor's Commission on Highway Safety. The Commission shall be composed of at least twelve (12) members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate one of the members as Chairman.

Section 2. The Commission shall meet regularly at the call of the Chairman and may hold special meetings at any time at the call of the Chairman, the Governor or the Secretary of Transportation.

Section 3. Members of the Commission shall be reimbursed for such necessary travel and subsistence expenses as are authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from the Governor's Highway Safety Program.

Section 4. The Commission shall have the following duties:

(a) Establish statewide highway safety goals and objectives.

(b) Review and support proposed highway safety legislation.

(c) Collect, analyze, and distribute information related to highway safety.

(d) Survey public opinion, attitudes, and ideas on highway safety.

(e) Establish innovative highway safety programs and activities.

(f) Advise the Governor on ways to promote highway safety in North Carolina.

Section 5. Executive Order Number 56, dated October 30, 1980 is hereby rescinded. All records of the Governor's Highway Safety Commission created pursuant to said executive order, are transferred to the Commission created herein. The Commission herein shall be the successor to the Governor's Highway Safety Commission.

Section 6. This Order shall be effective immediately and shall remain in effect until June 30, 1987, unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the twenty-eighth day of June, 1985.

#### EXECUTIVE ORDER NUMBER 13 NORTH CAROLINA STATE HEALTH COORDINATING COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby create and establish under the auspices of the Department of Human Resources a new North Carolina Health Coordinating Council whose membership and functions are commensurate with the health planning needs of North Carolina.

Section 2. The North Carolina Health Coordinating Council shall have the following duties and functions:

(1) Serve as a forum for hearing regional concerns and recommendations relating to health planning.

(2) Compile a list of state health needs and advise the Department of Human Resources.

(3) Advise the Department of Human Resources on issues related to state health needs, giving attention to local, regional and statewide needs.

(4) Review and comment on contents of documents related to health planning and

make recommendations concerning them to the Secretary of Human Resources and the Governor.

(5) Advise the Department of Human Resources on cost effective mechanisms for achieving health needs.

(6) Advise the Department of Human Resources on the best use and coordination of available resources.

(7) Advise and make recommendations on legislative proposals relating to health needs, including budgetary issues.

Section 3. Membership: The North Carolina Health Coordinating Council shall consist of not more than 23 members who shall be appointed by the Governor as follows:

Academic Medical Centers	1
Area Health Education Centers	1
Business and Industry (at least one individual representing small business and one representing large business)	2
Health Insurance Industry	1
NC Association of County Commissioners	1
NC Health Care Facilities Association	1
NC Hospital Association	1
NC Home Health Care Association	1
NC Medical Society	1
NC House of Representatives	1
NC Senate	1
Other Health Professional Associations(e.g., Nursing, Public Health, Dentistry, Pharmacy, Chiropractic, etc.)	2
Regional Representation (To provide adequate representation to all regions of the State. Emphasis should be on consumers of health care who are involved in health planning efforts at regional level, such as members of business/health coalitions or regional health planning councils)	6-8
Veterans Administration (non-voting)	1

Total 23

Section 4. Terms of Membership: The terms of membership of the North Carolina Health coordinating council shall be staggered so that the terms of approximately one-third of the members shall expire in a single calendar year. Terms shall be staggered in the following manner for the first three years:

seven serving one year,  
eight serving two years,  
eight serving three years.

After the first three years, each appointment shall be for a term of three years.

Section 5. Vacancies: The Governor shall have the power to remove from office any member of the North Carolina Health coordinating council for misfeasance, malfeasance, or nonfeasance. A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 6. Travel expense: Members of the Council shall receive necessary travel and substance expenses in accordance with the provisions of G.S. 138-5.

Section 7. Chairman: The Chairman and Vice Chairman of North Carolina Health Coordinating council shall be appointed by the Governor. The term of office for the Chairman and Vice Chairman shall be two calendar years. The Council may elect other such officers as it deems necessary.

Section 8. Meetings: The Council shall meet quarterly and at other times at the call of the chairman or upon written request of at least ten (10) of its members. All business meetings of the Council, its committees and subcommittees or special task forces shall be open to the public.

Section 9. Staff Assistance: The Department of Human Resources shall provide clerical and other services required by the Council.

Section 10. Executive Order Number 91, dated February 23, 1983 is hereby rescinded. All records of the North Carolina State Health Coordinating Council created pursuant to said executive order, are transferred to the Council created herein. The Council herein shall be the successor to the North Carolina State Health Coordinating Council.

Section 11. This Order shall be effective immediately and shall remain in effect until June 30, 1987, unless terminated earlier or extended by further Executive Order. Done in the Capital City of Raleigh, North Carolina, this the twenty-eighth day of June, 1985.

EXECUTIVE ORDER NUMBER 14  
GOVERNOR'S TASK FORCE ON  
DOMESTIC VIOLENCE

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby establish the Governor's Task Force on Domestic Violence.

Section 2. The Governor shall appoint at least ten persons as members of the Task Force, who shall be representative of the various professions concerned with this problem, such as the medical, legal, social service, and mental health professions. In addition, the Governor shall appoint as members representatives from the Governor's Crime Commission, the Department of Crime Control and Public Safety, the Department of Justice, the Department of Administration, the Administrative Office of the Courts, the Department of Human Resources, the Department of Public Instruction, and the North Carolina Council on the Status of Women. The Governor shall designate the Chairperson of the Task Force. All members shall serve at the pleasure of the Governor.

Section 3. The Task Force shall meet on a quarterly basis or as directed by the Governor or Secretary of Administration.

Section 4. The Task Force shall perform such duties as assigned by the Governor and the Secretary of the Department of Administration, and shall work closely with the staff of the North Carolina Council on the Status of Women and the Governor's Crime Commission. The Task Force shall have the following duties:

(A) To review and make recommendations for state government to coordinate agency activities in assisting victims of domestic violence;

(B) To evaluate and monitor the Domestic Violence Act and other laws in the area;

(C) To develop model programs for use by local communities; and

(D) To provide community education about domestic violence issues.

Section 5. While on official business, members of the Task Force shall be entitled to such per diem and reimbursement for travel and subsistence as may be authorized for members of State Boards and Commissions generally. The North Carolina Council on the Status of Women shall provide

the planning and administrative support for the Task Force.

Section 6. Executive Order Number 55, dated October 27, 1980, is hereby rescinded. All records of the Governor's Task Force on Domestic Violence created pursuant to said executive order, are transferred to the Task Force herein. The Task Force herein shall be the successor to the Governor's Task Force on Domestic Violence.

Section 7. This Order shall become effective immediately and shall remain in effect until June 30, 1987, unless terminated earlier or extended by further Executive Order.

Done in Raleigh, North Carolina, this twenty-eight day of June, 1985.

#### EXECUTIVE ORDER NUMBER 15 JUVENILE JUSTICE PLANNING COMMITTEE

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. The membership of the Juvenile Justice Planning Committee, an adjunct committee of the Governor's Crime Commission, shall consist of twenty three (23) members selected as follows:

(a) The following fifteen (15) members shall serve by virtue of their membership in the Commission: The two (2) citizens with knowledge of juvenile delinquency and the school system; the two (2) citizens under the age of 21; the representative of a "private" juvenile delinquency program; the citizen appointed at the discretion of the Governor; the judge of district court specializing in juvenile matters; one of the three county commissioners or county officials; one of the three police executives; the Secretary of Crime Control and Public Safety; the Secretary of the Department of Human Resources; the Superintendent of Public Instruction; the Administrator for Juvenile Services of the Administrative Office of the Courts; the Attorney General and the Director of Youth Services.

(b) The following seven (7) members shall be appointed by the Governor and serve at the pleasure of the Governor: Representatives of a business group or a business that employs youth; of a private organization that focuses on



strengthening the family unit; parent groups; neglected or dependent children and delinquency prevention and treatment; of a local government youth serving agency; and two youth members under the age of twenty-one, and who are or have been under the jurisdiction of the juvenile justice system.

(c) The Chairman of the Juvenile Law Study Commission appointed pursuant to North Carolina General Statute Section 7A-740.

Section 2. This Order shall be effective immediately and shall remain in effect until June 30, 1989, unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the twenty-eighth day of June, 1985.

#### EXECUTIVE ORDER NUMBER 16 NORTH CAROLINA COUNCIL ON THE HOLOCAUST

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby establish the North Carolina Council on the Holocaust. The purpose of the Council is to prevent future atrocities by developing a program of education and observance of the Holocaust.

Section 2. The Council shall consist of not more than 25 members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate from among the membership the Chairman and Vice-Chairman.

Section 3. Executive Order Number 63, dated April 29, 1981, is hereby rescinded. All records of the North Carolina Council for the Holocaust created pursuant to said executive order, are transferred to the Council herein. The Council herein shall be the successor to the North Carolina Council on the Holocaust.

Section 4. This Order shall become effective immediately and shall remain in effect until June 30, 1987, unless terminated earlier or extended by further Executive Order.

Done in Raleigh, North Carolina, this twenty-eighth day of June, 1985.

#### EXECUTIVE ORDER NUMBER 17 AMERICA'S FOUR HUNDREDTH ANNIVERSARY

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. Executive Order Number 88, dated November 9, 1985, which establishes county committees on America's 400th Anniversary, is hereby extended through and including December 31, 1987.

Section 2. This Order shall be effective immediately and shall remain in effect until June 30, 1987, unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the twenty-eighth day of June 1985.

#### EXECUTIVE ORDER NO. 18 EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the State of North Carolina to provide equal employment opportunities for all state employees and for all applicants for state employment without regard to race, religion, color, national origin, sex, age or handicap.

As an employer, the State has and continues to recognize the efficient and effective government requires the talents, skills and abilities of all available human resources.

Policies have been adopted by the State Personnel Commission and equal employment opportunity program which emphasizes taking positive measures has been established to assure equitable and fair representation of all of our citizens.

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

#### Section 1. EQUAL EMPLOYMENT POLICIES AND PROGRAMS

The State of North Carolina is committed to equal employment opportunity and the equal opportunity program to accomplish total equal employment in and throughout all aspects of its workforce. The policies and programs that have been adopted by the Personnel Commission represent the commitment of the state and must be complied with fully.

#### Section 2. ADMINISTRATION

##### (A) Agencies

The head of each agency, department, commission

or university is responsible for assuring that these policies and programs are implemented fully and successfully throughout their organizations. Each agency head shall appoint an individual designated as the EEO Officer.

State appointing authorities and other management personnel will take positive measures that are established by the State Personnel Director with approval of the State Personnel Commission to ensure that equal opportunity is available in all areas of employment activities including recruitment, hiring, testing, training, transfer, performance appraisal, promotion, demotion, compensation, termination, layoffs and other terms, conditions or privileges of employment. Such measures shall be undertaken to improve the representation of women, minority group members, handicapped and older persons in and throughout all levels of the state's workforce.

(B) Office of State Personnel

The State Personnel Director is responsible for assisting management in achieving equal employment opportunity objectives through:

- 1) establishing policies, guidelines and programs with the Personnel Commission's approval;
- 2) evaluating and monitoring program effectiveness; and
- 3) providing technical assistance and training.

#### Section 3. REPORTS AND RECORDS

The State Personnel Director shall communicate with the Governor and the agency heads on the implementation and results of the Equal Employment Opportunity program and provide an annual analysis of the program's progress.

#### Section 4. CITIZEN CONTRIBUTION

The North Carolina Human Relations Council shall advise and assist the Governor and the Office of State Personnel in the implementation of the State's equal employment opportunity program, thereby assuring citizen contributions to the program.

#### Section 5. VETERANS PREFERENCES

Nothing in this Order shall be construed to repeal or modify any Federal, State, territorial, or local laws, rules or regulations creating special

rights or preferences for veterans.

#### Section 6. PRIOR ORDERS

All prior Executive Orders or portions of prior Executive Orders inconsistent are hereby repealed.

This Order is effective this first day of July, 1985.

#### EXECUTIVE ORDER NUMBER 19 GOVERNOR'S COMMISSION FOR RECOGNITION OF STATE EMPLOYEES

The State of North Carolina is noted for having loyal, efficient, and dedicated employees who provide valuable services to every citizen of this great State. The State of North Carolina is proud of this tradition of public service and wishes to recognize contributions made by these employees.

Therefore, by the authority vested in me by the Constitution and laws of North Carolina, it is ORDERED:

##### Section 1. Establishment

(a) For the purpose of recognizing our employees, there is created the Governor's Commission for Recognition of State Employees. The Commission shall be composed of five members appointed by the Governor. The Chair of the Commission shall be selected by the Governor. Each member shall be appointed for a term of two years and may be reappointed to the Commission. Appointment to vacancies shall be made by the Governor for unexpired terms. Initial appointments to the Commission shall expire June 30, 1987.

(b) The State Personnel Director or his designee within the Office of State Personnel shall serve as Secretary to the Commission.

##### Section 2. Duties

The duties of the Commission are:

(a) Each year, to recommend to the Governor a week to be proclaimed as North Carolina State Employee Appreciation Week.

(b) Each year, to develop and carry out a program for recognizing outstanding employees who shall receive the Governor's Award of Excellence. This program shall include criteria for awards, number of awards, methods of competition and selection, and shall provide for participation by every state department, agency, and institution.

##### Section 3. Administration

(a) The State Personnel Director shall provide administrative and clerical assistance to the Commission in the exercise of their duties.

(b) Funds necessary to develop and implement programs of the Commission shall be provided by the Office of State Personnel and participating departments, with cooperation and concurrence by the State Budget Director.

This Order shall be effective and shall remain in effect until rescinded by Executive Order or superseded by legislation.

This order is effective this 7th day of August, 1985.

EXECUTIVE ORDER NUMBER 20  
WELLNESS IMPROVEMENT FOR STATE  
EMPLOYEES

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ordered:

Section 1. ESTABLISHMENT

(a) There is established a program for Wellness Improvement for State Employees to meet State Government's responsibility to provide an environment conducive to positive health practices for State employees in all areas of the State. State government, as an organization, provides an excellent vehicle for changing employees' lifestyle positively. Healthy employees and programs that promote their health can help reduce increasing health benefit costs, absenteeism, and decreased productivity. Employees subject to the State Personnel Act as well as those exempt will be covered by this Program.

(b) The State Personnel Director is responsible for developing, coordinating, and implementing a program which will include, but not be limited to, concerns for:

(1) providing a working environment conducive to optimal health,

(2) improving employees' coping skills for occupational and day-to-day demands,

(3) improving employees' dietary patterns,

(4) improving employees' health through cardiovascular strengthening exercises,

(5) focusing on employees' responsibility for his or her own health, and

(6) utilizing available resources within State government and elsewhere to inform and educate personnel in all areas of health promotion.

Section 2. FUNCTIONS

(a) The State Personnel Director shall develop a comprehensive Wellness Improvement for State Employees (WISE) Policy and Program for recommendation to the State Personnel Commission on or before November 15, 1985.

(b) Upon approval by the State Personnel Commission, the State Personnel Director shall implement and maintain the WISE Program which will be expanded to cover employees exempt from the State Personnel Act.

(c) The WISE Program will facilitate a combination of educational, organizational, and environmental activities designed to support behaviors conducive to the positive health of employees.

Section 3. ADMINISTRATION

(a) Each agency head shall designate one employee as the WISE Program Coordinator to be responsible for implementation of the Program within the agency and development of additional healthful practices necessary to meet special situations and needs that are unique to a particular agency and its employees. In addition, an advisory committee made up of these representatives shall be established. The names of the above-mentioned individuals are to be forwarded to the State Personnel Director within 45 days from the date of this order.

(b) The State Personnel Director shall be responsible for establishing lines of communication with the individuals named by the agency heads. The Director shall also be responsible for coordinating needed training and technical assistance with the various resources that have been identified.

(c) Existing employee groups already practicing healthful activities within State government, are to be identified and incorporated into the WISE Program.

Section 4. EVALUATION

(a) The evaluation will focus on the manner in which program activities are being carried out as well as immediate effects and ultimate outcomes of the Program.



This Order is effective this third day of September, 1985.

EXECUTIVE ORDER NUMBER 21  
STATE FAMILY PLANNING ADVISORY  
COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. I hereby establish the State Family Planning Advisory Council, to comply with Federal recommendations in accordance with Title X, Public Health Service Act that an advisory body consisting of consumer and agency representatives provide on-going input to the administration of Title X grant funds. The Council shall be advisory to the Family Planning Branch, Division of Health Services, North Carolina Department of Human Resources.

Section 2. The State Family Planning Advisory Council shall consist of not more than 30 members who shall be appointed by and serve at the pleasure of the Secretary of the Department of Human Resources.

Section 3. This Order shall become effective immediately and shall remain in effect until June 30, 1989, unless terminated earlier or extended by further Executive Order.

Done in Raleigh, North Carolina, this third day of October, 1985.

EXECUTIVE ORDER NUMBER 22  
TO IMPLEMENT CERTAIN ECONOMIES  
IN NORTH CAROLINA  
STATE GOVERNMENT TO RESPOND TO  
FEDERAL LEGISLATION REQUIRING  
A FEDERAL BALANCED BUDGET

The United States Congress has enacted the Gramm-Rudman-Hollings balanced budget amendment to the federal debt ceiling limit bill (RL-99-177) requiring the federal government to reach a balanced budget by the fiscal year 1991. Implementation of said Gramm-Rudman-Hollings amendment may reduce the federal budget authority for programs in North Carolina by an amount exceeding \$200 million during fiscal years 1986 and 1987. The Governor, as Director of the Budget, has the responsibility to maintain needed services within a balanced state budget during each fiscal period. NOW, THEREFORE, by authority vested

in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Effective January 3, 1986, and until further notice, vacant positions in the Executive Branch of State Government, except those for which prior commitments have been made, may not be filled without prior written approval of the Office of State Budget and Management. This Order shall not apply to the employees of the 141 North Carolina local public school units and the 58 community colleges and technical institutions, nor shall it apply to those employees exempt from the State Personnel Act within the 17 educational institutions of the University of North Carolina.

Section 2. This Order shall become effective on January 3, 1986 and shall remain in effect until rescinded by Executive Order.

This the 8th day of January, 1986.

EXECUTIVE ORDER NUMBER 23  
GOVERNOR'S COUNCIL ON ALCOHOL  
AND DRUG ABUSE  
AMONG CHILDREN AND YOUTH

By the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. ESTABLISHMENT

(a) There is established a Governor's Council on Alcohol and Drug Abuse Among Children and Youth.

(b) The Council shall consist of not more than twenty (20) persons who shall be appointed by the Governor. The Governor shall designate the chairman of the Council. All Council members shall serve at the pleasure of the Governor.

(c) The persons appointed shall be citizens who have demonstrated interest, involvement or expertise in children and youth issues related to prevention, intervention and treatment of alcohol and drug abuse.

Section 2. FUNCTIONS

(a) The Council is authorized to meet regularly at the call of the Chairman, the Governor, or the Secretary of Human Resources.

(b) In fulfilling its undertaking, the Council shall have the following duties relating to alcohol and drug abuse among children and youth:

(1) Review the General Statutes of North Carolina applicable to substance abuse, including criminal and service delivery legislation and make recommendations concerning needed changes;

(2) Review and recommend mechanisms for the coordination of state and local resources for addressing identified needs;

(3) Conduct public hearings and advise the Governor and other appropriate state government departments and agency heads of the result and recommendations of the Council;

(4) Encourage local areas to identify an existing board, council or commission to mobilize resources to address substance abuse problems among this population;

(5) Encourage local boards, councils or commissions to develop an implementation plan to meet identified needs of this target population;

(6) Assist local boards, councils or commissions in identifying model prevention, intervention and treatment efforts;

(7) Encourage program activities that increase public awareness of youth substance abuse and strategies to decrease the problem, and

(8) Other such duties as assigned by the Governor or the Secretary of Human Resources.

#### Section 3. ADMINISTRATION

(a) The heads of the State departments and agencies shall, to the extent permitted by law, provide the Council information as may be required by the Council in carrying out the purposes of this Order.

(b) The Department of Human Resources shall provide staff and support services as directed by the Secretary of Human Resources.

(c) Members of the Council shall serve without compensation, but may receive reimbursement contingent on the availability of funds for travel and subsistence expenses in accordance with state guidelines and procedures.

(d) The Council shall be funded by the Department of Human Resources and contributions received from the private sector.

#### Section 4. REPORTS

(a) The Council will present an annual report to the Governor and the Secretary of Human Resources.

(b) Reports of recommendations may be submitted to the Governor and Secretary of Human Resources as deemed appropriate by the Chairman.

#### Section 5. IMPLEMENTATION

The Office of the Secretary of Human Resources will review reports and recommendations and take appropriate action.

#### Section 6. PRIOR ORDERS

All prior Executive Orders or portions of prior Executive Orders inconsistent herewith are hereby repealed. This Order is effective the 29th day of January, 1986.

### EXECUTIVE ORDER NUMBER 24 GOVERNOR'S PROGRAM TO STRENGTHEN HISTORICALLY BLACK COLLEGES

By the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

#### Section 1. ESTABLISHMENT

(a) There is established the Governor's Program to Strengthen Historically Black Colleges.

(b) The program to Strengthen Historically Black Colleges shall be administered by the Senior Education Advisor.

(c) The purpose of the program to Strengthen Historically Black Colleges is to advance the development of human potential in our State, to strengthen the capacity of Historically Black Colleges and Universities, to provide quality education, and to further establish the role and value of Historically Black Colleges and Universities to our State.

#### Section 2. FUNCTIONS

(a) The program shall seek to achieve a significant increase in the participation by Historically Black Colleges and Universities in State sponsored programs.

(b) The program shall be administered to identify, reduce, and eliminate barriers which may have inadvertently resulted in reduced participation in, and reduced benefits from State sponsored programs by Historically Black Colleges and Universities.

(c) The program shall seek to involve business and industry in strengthening Historically Black Colleges.

#### Section 3. ADMINISTRATION

(a) Each Cabinet Department and Executive agency, defined in G.S. 143B-6, excepting the Department of Community Colleges, hereinafter referred to as Designated State

Agencies, shall establish an annual plan to increase the ability of Historically Black Colleges and Universities to participate in State sponsored programs. These plans shall have measurable objectives of proposed agency actions and shall be submitted at such time and in such form as the Governor shall designate.

(b) In consultation with the Designated State Agencies, the Senior Education Advisor shall undertake a review of these plans and develop an integrated Annual State Plan for assistance to Historically Black Colleges and Universities for consideration by the Governor and the Cabinet.

(c) The Senior Education Advisor shall provide each President and/or Chancellor of a Historically Black College or University in North Carolina and the President of the University of North Carolina an opportunity to comment on the proposed Annual State Plan prior to its consideration by the Governor.

(d) Each Designated State Agency shall submit to the Senior Education Advisor a mid-fiscal year progress report of its achievement of the objectives set forth in its plan and such agency shall at the end of the fiscal year submit to the Senior Education Advisor an annual performance report which shall specify agency performance of its measurable objectives.

(e) The Secretary of Commerce, to the extent permitted by law, shall stimulate initiatives by private sector businesses and institutions to strengthen Historically Black Colleges and Universities, including efforts to further improve the management, financial structure and research of such Historically Black Colleges and Universities.

#### Section 4. REPORTS

(a) The Senior Education Advisor after compliance with the requirements of this order, shall submit to the Governor and the Cabinet an Annual State Plan not later than June 30 of each year this order is in effect.

(b) Senior Education Advisor shall submit to the Governor an annual state performance report on each Designated State Agency's compliance with the Annual State Plan. This report will include the performance appraisals of

each Designated State Agency and will also include recommendations for improvements.

#### Section 5. IMPLEMENTATION

(a) Prior to the development of the first Annual State Plan, the Senior Education Advisor shall supervise a special review by every Designated State Agency of its programs to determine the extent to which Historically Black Colleges and Universities are given an opportunity to participate in State Sponsored Programs. The Designated State Agencies will examine unintended regulatory barriers, determine the adequacy of the announcement of programmatic opportunities of interest to these colleges and identify ways of increasing equity and advantage.

(b) The special review shall take place not later than April 30, 1986.

(c) Designated State Agencies shall submit their annual plans required by this order to the Senior Education Advisor not later than May 15, 1986.

(d) The first Annual State Plan for assistance to Historically Black Colleges and Universities shall be delivered to the Governor and the Governor's Cabinet by not later than June 30, 1986.

#### Section 6. PRIOR ORDERS

All prior Executive Orders or portions of prior Executive Orders inconsistent herewith are hereby repealed.

This Order is effective the 13th day of February, 1986.

#### EXECUTIVE ORDER NUMBER 25 REGIONAL POLICY FOR NORTH CAROLINA

In 1970, this State delineated boundaries for multi-county planning and development regions and in 1971 a Lead Regional Organization was designated for each region to establish goals and objectives, and serve as the regional agent in dealing with state and federal agencies. Thereafter, state agencies were instructed to utilize the Lead Regional Organization for planning, implementing, and coordinating programs which impact local governments. The concepts of multi-county planning regions and the Lead Regional Organization policy have been very effective in fostering intergovernmental coordination and cooperation and this



Administration is committed to close cooperation with local governments and their agencies. Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

#### Section 1. ORGANIZATION

(a) A single Lead Regional Organization shall continue to exist in each of the eighteen multi-county planning development regions or such larger or smaller number of regions as may be hereinafter delineated by the Department of Administration.

(b) The governing board of each Lead Regional Organization's membership composition, but such Lead Regional Organizations are urged to limit policy board representation to elected officials of the member local governments.

#### Section 2. FUNCTIONS

(a) Lead Regional Organizations, whether Councils of Governments or Economic Development Districts shall have the same powers and duties specified for Councils of Governments in the General Statutes of North Carolina.

#### Section 3. ADMINISTRATION

(a) In dividing the State for administrative and/or service delivery purposes, State agencies shall make subdivisions coterminous with the Lead Regional Organization boundary lines, or with combinations of such, unless it can be demonstrated that strict conformance would result in inefficiencies, or that the proposed subdivision bears no relationship to regional plans or activities.

(b) State agencies desiring to eliminate, re-direct, or begin programs which impact local governments through Lead Regional Organizations are hereby directed to submit any proposed change or modification to the Local Government Advocacy Council for an advisory opinion prior to taking action. New programs involving service delivery through the Lead Regional Organizations must have the approval of local governments affected.

(c) State financial support to Lead Regional Organizations should be limited to grants to carry out specific tasks which are imposed by State government, or tasks which involve a coordinated state-wide activity which will be

beneficial to both State and local governments. State funds, if provided, shall not be utilized for general administrative support, nor shall they be utilized to supplant local funds.

(d) The determination of personnel procedures for Lead Regional Organizations shall be left to the discretion of local governments, and no State agency shall impose its personnel procedures on the Lead Regional Organizations. Nothing in this section shall preclude the establishment of reasonable minimum education and experience standards for positions funded by a State agency, provided that such standards shall be no more stringent than those in use by State or Federal agencies for comparable positions. The Lead Regional Organizations shall have complete autonomy in filling such positions from among applicants meeting those reasonable minimum standards.

#### Section 4. MODIFICATION OF REGIONAL BOUNDARIES

(a) The Secretary of the Department of Administration is hereby charged with revising and implementing, if necessary, the existing guidelines dealing with the changing of regional boundary lines, in accordance with the following:

(b) Boundary changes shall not be considered unless a petition for change is received from one or more county boards of commissioners or from the governing bodies of one or more municipalities whose combined populations represent at least 50% of the county population. A boundary change shall be made until after notice of such proposed change is given, and sufficient opportunity for public comment is provided.

(c) Any request for boundary change shall be acted upon within ninety (90) days of the receipt of a valid petition.

(d) Approved boundary changes shall be effective on July 1st of the following year, and must be announced at least ninety days prior thereto.

(e) A request for change which is not approved by the State shall not be reconsidered for a minimum period of three years from the date of disapproval.

#### Section 5. PRIOR ORDERS

All prior executive orders or portions of prior executive orders inconsistent herewith are hereby repealed.

This order is effective this the  
21st day of February, 1986.

JUDICIAL ORDERS

STATE OF NORTH CAROLINA

Judicial Department

Joseph Branch Chief Justice

TO ALL TO WHOM THESE PRESENTS SHALL COME - GREETING:

Reposing special trust and confidence in your integrity and knowledge, and by virtue of authority vested in me by law, I do by these presents pursuant to G.S. 7A-752 appoint ROBERT ARTHUR MELOTT, Director of the Office of Administrative Hearings for the term ending June 30, 1989, and do hereby confer upon you all the rights, privileges and powers useful and necessary to the just and proper discharge of your duties as Director of the Office of Administrative Hearings.

In Witness Whereof, I have hereunto signed my name and affixed the Seal of the Supreme Court of the State of North Carolina at Raleigh, North Carolina, this 23rd day of December 1985.

s/Joseph Branch  
Chief Justice of the Supreme  
Court of North Carolina



ADMINISTRATIVE ORDERS

STATE OF NORTH CAROLINA  
WAKE COUNTY

In the Office of  
Administrative Hearings  
ORDER

Under the provisions of G.S. 147-28 an official seal is hereby adopted for this Office for the purpose of attesting and authenticating papers and records. The seal is described as follows:

The figure of Minerva (Liberty), helmeted and holding in her right hand a pole bearing a liberty cap. Her extended left hand grasps a large scroll with the word Constitution emblazoned in capital letters. Inscribed on the platform supporting the figure is the Latin phrase In Legibus Salus (Safety in the Laws). Surrounding the seal are the words "State of North Carolina" and "Office of Administrative Hearings".

The seal is embossed in the margin hereof.

This seal, except for the words surrounding it, is a replica of the original (1779-1794) Great Seal of the State of North Carolina.

In addition to its historic significance, this seal is highly appropriate for this Office.

The helmet indicates a readiness to do battle to obtain or defend freedom. The liberty cap is a famous symbol of freedom. It is a copy of the Phrygian headdress which was given to a freed slave in ancient Rome. It was adopted by both American and French revolutionaries in opposition to monarchy. The staff is the protective weapon of biblical tradition. The symbolism is apt.

The inscription on the scroll is significant because the authority for this Office is found in the Constitution of North Carolina. N. C. Const. Art. IV, Sec. 3. Moreover, this is an independent agency under the Constitution. N. C. Const. Art. III, Sec. 11.

The motto is particularly meaningful in that the essential function of this Office, in both its Rules and Hearings Divisions, is to assure the safety of the people by requiring that agency rules be adopted and applied in compliance with the laws enacted by the representatives of the people, the General Assembly.

This the 3rd day of January, 1986.

s/Robert A. Melott  
Director and Chief Hearing Officer



STATE OF NORTH CAROLINA

Office of Administrative Hearings

TO ALL TO WHOM THESE PRESENTS SHALL COME - GREETING:

I, Robert A. Melott, Reposing special trust and confidence in the integrity and knowledge of BEECHER REYNOLDS GRAY now, by virtue of the authority vested in me by law I do hereby appoint him Hearing Officer and confer upon him all of the rights, privileges and powers useful and necessary to the just and proper discharge of his duties.

In Witness Whereof, I have hereunto signed my name and affixed the Seal of the Office of Administrative Hearings of the State of North Carolina, at Raleigh, North Carolina, this the 1st day of March 1986.

s/Robert A. Melott  
Chief Hearing Officer

STATE OF NORTH CAROLINA

Office of Administrative Hearings

TO ALL TO WHOM THESE PRESENTS SHALL COME - GREETING:

I, Robert A. Melott, Reposing special trust and confidence in the integrity and knowledge of FRED GILBERT MORRISON, JR. now, by virtue of the authority vested in me by law I do hereby appoint him Hearing Officer and confer upon him all of the rights, privileges and powers useful and necessary to the just and proper discharge of his duties.

In Witness Whereof, I have hereunto signed my name and affixed the Seal of the Office of Administrative Hearings of the State of North Carolina, at Raleigh, North Carolina, this the 3rd day of March 1986.

s/Robert A. Melott  
Chief Hearing Officer



STATE OF NORTH CAROLINA

Office of Administrative Hearings

TO ALL TO WHOM THESE PRESENTS SHALL COME - GREETING:

I, Robert A. Melott, Reposing special trust and confidence in the integrity and knowledge of ANGELA REBECCA BRYANT now, by virtue of the authority vested in me by the law I do hereby appoint her Hearing Officer and confer upon her all of the rights, privileges and powers useful and necessary to the just and proper discharge of her duties.

In Witness Whereof, I have hereunto signed my name and affixed the Seal of the Office of Administrative Hearings of the State of North Carolina, at Raleigh, North Carolina, this the 19th day of March 1986.

s/Robert A. Melott  
Chief Hearing Officer

STATE OF NORTH CAROLINA

Office of Administrative Hearings

TO ALL TO WHOM THESE PRESENTS SHALL COME - GREETING:

I, Robert A. Melott, Reposing special trust and confidence in the integrity and knowledge of THOMAS R. WEST now, by virtue of the authority vested in me by law I do hereby appoint him Hearing Officer and confer upon him all of the rights, privileges and powers useful and necessary to the just and proper discharge of his duties.

In Witness Whereof, I have hereunto signed my name and affixed the Seal of the Office of Administrative Hearings of the State of North Carolina, at Raleigh, North Carolina, this the 4th day of April 1986.

s/Robert A. Melott  
Chief Hearing Officer

## STATEMENTS OF ORGANIZATION

### OFFICE OF ADMINISTRATIVE HEARINGS

The Office of Administrative Hearings is an independent, quasi-judicial agency. It is one of the twenty-five administrative departments of state government authorized by Article III, Section 11 of the North Carolina Constitution.

The Office of Administrative Hearings has two primary responsibilities:

(1) To compile and publish the North Carolina Administrative Code and the North Carolina Register; and

(2) To provide independent hearing officers to preside in contested cases under the Administrative Procedures Act and thereby prevent the commingling of the legislature, judicial and executive functions in the administrative process.

The head of the office of Administrative Hearings is its Director who is, ex officio,

Chief Hearing Officer. The office is organized into three

divisions: Rules; Hearings; and Administrative. The Rules Division carries out the compilation and publication of rules. The Hearings Division is responsible for the processing of contested cases from the filing of a petition through the forwarding of the record to the appropriate agency. The Hearings Division has the judicial power granted by Article IV, Section 3, of the North Carolina Constitution necessary to carry out its responsibilities. The Administrative Division is concerned solely with the internal operation and management of the Office.

The public may obtain information about and make submissions or requests to the Office of Administrative Hearings in person at 10 East Jones Street, Raleigh, North Carolina, by mail at Post Office Drawer 11666, Raleigh, N. C., 27604, and by telephone as follows:

Administrative Division

919/733-2691

Rules Division

919/733-2678

Hearings Division

919/733-2698



## PROPOSED RULES

### Office of Administrative Hearings

Notice is hereby given in accordance with G.S. 150B-12 that the Office of Administrative Hearings intends to adopt and amend regulations entitled General Rules Division and Hearings Division. The purpose of the proposed regulations is to establish general office policies, procedures for filing for publication in the NCAC and the North Carolina Register, and procedures for contested cases conducted by Office of Administrative Hearings.

The proposed effective date of this action is August 1, 1986.

Statutory Authority: Chapter 150B of the General Statutes

The public hearing will be conducted at 10:00 a.m. on June 27th at Room 150 of the Highway Building located on South Wilmington Street in Raleigh.

Comment Procedures: Data, opinions, and arguments concerning these rules must be submitted by June 13, 1986 to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: Nolly Mason.

## CHAPTER 1 - GENERAL

### .0001 COST FOR COPIES

(a) Copies in looseleaf form of any public documents as filed in the Office of Administrative Hearings, are available at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$0.15) per page for each page in excess of ten.

(b) Certified copies of any public document filed in the Office of Administrative Hearings are available at a cost of one dollar (\$1.00) per certification in addition to the copying cost set out in Paragraph (a) of this Rule.

## CHAPTER 2 - RULES DIVISION

### SUBCHAPTER 2A - NCAC

### SECTION .0100 - PUBLICATION

#### 0101 PURPOSE

Pursuant to General Statute 150A, each state agency shall

file all rules and rule changes with the Administrative Procedures Section of the Attorney General's Office so that the rules and rule changes may become effective and so that the section may publish the North Carolina Administrative Code. The filings shall be in proper physical form in accordance with the rules in this Chapter.

#### .0102 LOCATION

The Administrative Procedures Section of the Attorney General's Office is located at 40 East Jones Street, Raleigh, North Carolina and all the past and current rules filed under the provisions of Chapter 150A are available for public inspection at that location. The mailing address is: N-6, Department of Justice Administrative Procedures Section P.O. Box 629 Raleigh, North Carolina 27602 Telephone: (919) 733-4723

#### .0101 PUBLICATION OF THE NCAC

(a) Administrative rules adopted by state agencies and occupational licensing boards pursuant to General Statute Chapter 150B shall be filed with the Office of Administrative Hearings to be published in the North Carolina Administrative Code.

(b) Filings for rules and rule changes shall be filed in proper physical form in accordance with the rules in this Subchapter.

#### .0102 AVAILABILITY OF THE NCAC

(a) The Office of Administrative Hearings has available for public inspection all past and current rules filed under the provisions of General Statute Chapter 150B.

(b) The North Carolina Administrative Code is available in two forms as follows:

(1) Looseleaf copies are available at a minimum cost as established in 26 NCAC 1 .0001. Due to the volume of the Code, the entire set of rules is not available in looseleaf form.

(2) The entire NCAC is published on microfiche twice a year, March and October. Each publication is available at a cost of forty dollars (\$40.00).

(c) A cost as established in 26 NCAC 1 .0001 is charged for certifying any copies of the NCAC.

SECTION .0200 - GENERAL FILING  
REQUIREMENTS

.0201 ADOPTION OF RULES

(a) An adoption is a completely new rule with a new rule number.

(b) In order to be acceptable for filing with the Attorney General's Office Office of Administrative Hearings, all adopted rules shall be accompanied by a completed Certification of Rulemaking Submission for Filing form.

(c) The original and one copy of the rule as adopted shall be filed in the Administrative Procedures Section of the Attorney General's Office Office of Administrative Hearings. The original shall be in the proper form required by Rule .0402 of this Subchapter.

(d) If an adopted rule is identical to the proposed rule published in the North Carolina Register as provided in G.S. 150B-12, the filing shall be accompanied by a statement of the volume, issue and page or pages of the notice publication.

(e) If the adopted rule differs in anyway from the proposed rule published in the North Carolina Register, the filing shall be accompanied by a copy of the proposed rule as submitted for publication noting the changes between the proposed rule and the adopted rule and a statement of the volume, issue and page or pages of the notice publication.

(f) If publication of the proposed rule in the North Carolina Register was not required, the filing shall be accomplished as set out in Paragraphs (a), (b) and (c) of this Rule.

.0202 AMENDMENTS TO RULES

(a) Deletion, addition or change to an existing rule is an amendment to the rule.

(b) In order to be acceptable for filing with the Attorney General's Office Office of Administrative Hearings, all amended rules shall be accompanied by a Certification of Rulemaking Submission for Filing form.

(c) The original of the rule as amended shall be filed with the Administrative Procedures Section of the Attorney General's Office Office of Administrative Hearings. The original shall be in proper form

as required by Rule .0402 of this Subchapter.

(d) If an amended rule is identical to the proposed rule published in the North Carolina Register as provided in G.S. 150B-12, the filing shall be accompanied by a statement of the volume, issue and page or pages of the notice publication.

(e) If an amended rule as adopted differs from the proposed amendments published in the North Carolina Register, the filing shall be accompanied by a copy of the proposed amendments as submitted for publication and a copy of the amended rule as adopted with changes from the proposed amendments identified by striking through deleted portions in a contrasting color and highlighting added portions in a different contrasting color, and a statement of the volume, issue and page or pages of the notice publication.

(f) If publication of the proposed amendment in the North Carolina Register was not required, each amended rule shall be accompanied by the most recent line-numbered copy of the existing rule with distinctive revisions and editorial markings showing each deletion, addition or change.

(g) If publication of the proposed amendments in the North Carolina Register was not required, the filing shall be accomplished as set out in Paragraphs (a), (b), (c) and (f) of this Rule.

.0203 REPEAL OF RULES

(a) A repeal of a rule is the deletion of the entire text of a rule. When a rule is repealed, that rule number can not be used again. The number, catchline, and final history note will remain in the North Carolina Administrative Code permanently for publication and reference purposes.

(b) The original and one copy of a statement of repeal shall be filed with the Administrative Procedures Section of the Attorney General's Office Office of Administrative Hearings. The original shall be in proper form as required by Rule .0402 of this Subchapter.

(c) In order to be acceptable for filing with the Attorney General's Office Office of Administrative Hearings, a statement of a repeal of a rule shall be accompanied by a Certification of Rulemaking Submission for Filing form.



(d) The statement of a repealed rule should contain only an introductory statement, rule number, catchline, and history note. No text will remain within the rule.

#### .0204 REQUEST FOR TRANSFER

(a) An agency may request that one or more of its rules be recodified.

(b) The request for recodification shall be submitted to the Administrative Procedures Section of the Attorney General's Office Office of Administrative Hearings on a Certification of Transfer and a table of contents setting out the catchline and number for each rule for each section affected by the requested transfer.

(c) All Certification of Transfer forms must bear the stamp of the Governor's Rules Review Commission officer prior to submission to the Administrative Procedures Section of the Attorney General's Office.

#### .0205 SUBMISSION FOR FILING FORM

(a) The completed Certification of Rulemaking Submission for Filing form certifies that the rule being filed has been officially adopted, amended, or repealed; identifies the rule by citation in the North Carolina Administrative Code, and indicates under what authority the rule has been adopted.

(b) All certification forms accompanying rules must bear the stamp of the Governor's Rules Review office before the rules can be accepted for filing in the Administrative Procedures Section of the Attorney General's Office.

(c) More than one rule may be listed on a single form if the same procedure (adoption, amendment, or repeal) is being done on several rules in the same chapter for the same reason and the filing dates and effective dates are the same.

#### .0206 CHANGES IN CATCHLINES OR HISTORY NOTES

Request for changes in catchlines or history notes can be made by memo to the Administrative Procedures Section Office of Administrative Hearings.

This memo must clearly identify the changes including a full citation.

#### .0207 RULE SUMMARIES

For distribution and publication purposes, the Attorney General Chief Hearing Officer of the Office of Administrative Hearings has statutory authority to summarize rules which he judges would be impracticable to distribute or to publish in full. An agency with rules which it believes would be impracticable to distribute or publish may request that the Attorney General Chief Hearing Officer examine such rules. If he determines that the submitted rules are inappropriate for distribution or publication, he may allow the agency to draft a summary rule and file the full rule or rules in their existing form or such other form as he may specify.

#### .0208 ILLUSTRATIONS/NOTES

An agency may include material which is not a substantive portion of the rule but is an illustration of something in the rule. The material which is meant only as an illustration must be set aside by preceding it with the word "Note:". This should be done after the text of the rule. The agency is advised to make sure it has not included any substantive portion of the rule as an illustration in this manner. Illustrations are merely examples or clarifications which, when not read, do not change the meaning of the rule.

#### .0209 REFUSAL OF RULES

(a) The Attorney General's Office of Administrative Hearings will refuse to accept for filing any proposed rules which do not meet the requirements of this Chapter Subchapter.

(b) If the filing is not acceptable, it will be returned to the agency with an indication of the changes needed.

#### .0210 ACCEPTANCE OF RULES FILED

(a) When an action is accepted for filing by the Attorney General's Office of Administrative Hearings, the agency will be sent a completed copy of the Certification on Rulemaking Submission for Filing form which indicates that the action is acceptable for filing.

(b) When the rule has been printed by the Attorney General's Office of



Administrative Hearings, the agency will receive one line-numbered copy of the document at no charge.

#### SECTION .0300 - TEMPORARY RULEMAKING

##### .0301 FILING TEMPORARY RULES: ADOPTIONS: AMENDMENTS: REPEALS

In order to be acceptable for filing with the Attorney General's Office Office of Administrative Hearings, all temporary adoptions, amendments, or repeals of rules shall be accompanied by a completed Certification of Temporary Rulemaking Submission for Filing form, a Certificate of Need, a proposed Notice of Public Hearing, and the proper number of copies required by Rules .0201, .0202, and .0203 of this Chapter Subchapter.

##### .0302 SUBMISSION FOR FILING FORM

Each temporary rule shall be filed with a Certification of Temporary Rulemaking Submission for Filing form. More than one temporary rule may be included on the same certification form if they are filed for the same reason, to be effective on the same date, and for the same period of time.

(b) All certification forms accompanying temporary rules shall bear the stamp of the Governor's Rules Review Commission Office before the rules can be accepted for filing with the Administrative Procedures Section of the Attorney General's Office.

#### SECTION .0400 - PHYSICAL FORMAT

##### .0401 GENERAL TYPING INSTRUCTIONS

Rules submitted to the Attorney General's Office Office of Administrative Hearings for filing shall be typed, one rule to a page, except two or more consecutive rules within a single section, subchapter, or chapter which are filed at the same time, may be typed on the same sheet and continued from one page to another:

(1) on an 8-1/2 by 11 inch sheet of paper (no letterhead, carbon copies or onion-skin accepted);

(2) on one side of the sheet only, with a one inch margin on all sides (65 space line); and

(3) with pica type, pica spacing, and black ink; use standard type only; do not use type of an unusual nature. The sheet may not be turned around in the typewriter to accommodate wide charts. Charts or figures may be included in the body of a rule only if they can be typed within the 65-space maximum (including all blank spaces).

##### .0402 ORIGINAL COPY OF RULES

All rules filed must be accompanied by an original copy of the rule.

###### (1) Adoptions and Amendments

(a) The original copy shall contain an introductory sentence identifying the citation and the action being taken.

(b) The rule shall be in proper physical form as it should read upon filing.

(c) Each rule shall be followed by a history note which contains the Statutory Authority, effective date, and any previous reoption or amendment dates if applicable.

###### (2) Repeals

(a) The original copy shall contain an introductory sentence identifying the citation of the rule and the repeal action being taken.

(b) Repealed rules will contain the rule number, rule name, followed by the complete history note noting the repealed effective date. No text is shown on the original copy of a repealed rule.

(c) Repealed rules may shall be combined with a single history note as long as if the rules are consecutive numerically and the effective dates and proposed repealed dates are identical. Any other combination must be approved by the Attorney General's Office.

##### .0403 INTRODUCTORY STATEMENT

(a) Each rule submitted to the Attorney General's Office Office of Administrative Hearings for filing shall have an introductory statement immediately preceding the rule. This introductory statement must contain the full official rule number, rule name, citation and the action being taken.

(b) The statement of the volume, issue and page of the notice publication as required in Rules .0201 and .0202 of this Subchapter may be included in the introductory statement.

(c) When part of a rule is to be amended, the agency shall cite the smallest portion of the rule which is changed. This is so the agency does not have to retype the entire rule when only a portion is being changed. When a rule is amended by the addition or deletion of a paragraph, the introductory statement should read as follows: "Rule (full citation) has been amended by the addition/deletion of Paragraph (c) as follows:". In this case, only the paragraph which is being re-written needs to be typed. Other paragraphs will be renumbered accordingly.

#### .0404 BODY OF RULES

(a) The body of the rule, or the part that is amended, shall follow immediately the introductory statement for that rule. Generally, there will be no lines skipped in the body of the rule except in unusual circumstances, such as tables. All paragraphs should be indented two spaces or to the third space from the left margin.

(b) All subsections and lists within the rule must be clearly labeled with the correct number or letter in parentheses as specified in Rules .0506 and .0507 of this Chapter Subchapter.

#### .0405 HISTORY NOTE

(a) Each rule submitted to the Attorney General's Office Office of Administrative Hearings for filing shall have a history note containing the following information:

(1) the authority for that rule,

(2) the proposed effective date of the rule, (last line if an adoption), and

(3) the effective date of the four most recent amendments to that rule or repealed line, whichever is applicable.

(b) The history note shall be typed after the text or after any illustrations in the rule skipping one line and typing the words "History Note:" indented two spaces from the left margin or on the third space followed by the words:

(1) "Statutory Authority" in a rule where the authority is strictly statutory, or "Authority" in a rule where the authority is other than statutory. This would then be followed by the properly cited General Statute or authority.

(2) On the next line, blocked under the letter "S" in "Statutory", the abbreviation "Eff." would be followed by the original effective date of the rule in full.

(3) On the next line all amendment dates to the original rule shall be listed following the words "Amended Eff.". The four most recent amendment dates shall be given in chronological order, with the most recent amendment listed first.

All items in the history note are separated by semicolons.

(c) Authorities cited in history notes shall be cited according to the rules of citation contained in "A Uniform System of Citation" (11th Ed. 1967) except that the General Statutes of North Carolina shall be identified by the designated "G.S." rather than "N.C. Gen. Stat.".

#### .0406 HISTORY NOTE: TEMPORARY ADOPTIONS: AMENDMENTS: REPEALS

(a) A temporary rule will have a history note which starts with the following statement: "Filed as a Temporary Rule Eff. (date), for a Period of (length) Days to Expire on (date)". The next line would then contain the citation of authority.

(b) A temporary amendment is placed on the first line of the history note regardless of any prior history. The history note shall retain prior effective and amendment dates if applicable. The following wording shall be used: "Filed as a Temporary Amendment Eff. (date), for a Period of (length) Days to Expire on (date)".

(c) A temporary repeal is placed on the first line of the history note, regardless of any prior history. The history note shall retain prior effective and amendment dates if applicable. The following wording shall be used: "Filed as a Temporary Repeal Eff. (date), for a Period of (length) Days to Expire on (date)".

#### SECTION .0500 - CODIFICATION OF RULES

##### .0501 CODIFICATION SYSTEM

(a) All rules to be filed with the Attorney General's Office Office of Administrative Hearings shall be codified within the system described in this Section, which has been

adopted by the Attorney General's Office Office of Administrative Hearings for codification of the North Carolina Administrative Code.

(b) The North Carolina Administrative Code has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the North Carolina Administrative Code is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

(c) All rules when filed with the Attorney General Office of Administrative Hearings shall be assigned a title, chapter, and a rule number. The agency may also assign either or both a subchapter designation and section number to the rule.

(d) The official citation to a rule in the North Carolina Administrative Code identifies the rule by title, chapter, subchapter (if any), section, or rule number. Once codified, a rule number may not be changed. This number is permanent and remains even when the rule is repealed.

#### .0502 CHAPTER SUBDIVISION

(a) The chapter is the second largest subdivision of the North Carolina Administrative Code. Each major department shall be responsible for assigning chapter numbers within its title.

(b) The first chapter in each title, with the exception of Title 21, Occupational Licensing Boards, shall be set aside as a chapter called "Departmental Rules." The departmental rules chapter shall contain rules which set out the general organization of the major department and may also be used for rules which apply to more than one portion of a title, or procedures which are used for several divisions of the department.

(b) With the exception of Title 21, all chapters within a title shall be assigned consecutive numbers. Chapter 1 being departmental rules.

#### .0503 SUBCHAPTER SUBDIVISION

(a) The subchapter is the largest of the optional subdivisions and shall be used to divide chapters into broad

subject areas, small agencies, sections of a division, etc., when an agency finds it appropriate. When subdividing a chapter into subchapters, an agency shall subdivide the entire chapter into at least two subchapters as with any subdivision.

(b) All subchapters of the North Carolina Administrative Code are represented by consecutive capital letters following the chapter number.

#### .0504 SECTION SUBDIVISION

(a) The section is the smaller of the optional subdivisions and the smallest subdivision which contains rules. It shall be used by the agency to place together small groups of rules in the same subject area. These small groups of rules shall be within chapters or subchapters depending upon whether the first optional subdivision is used.

(b) All sections are represented as the first two digits of a four digit number following a decimal. They shall be consecutive starting with Section .0100.

(c) Because the two digits are set aside, there is a limit of 99 sections within any chapter or subchapter. It is recommended, however, that the number of sections within a chapter or subchapter be kept well below the maximum in order to provide easily for the addition of new sections in the future and to increase the ease with which particular rules can be located.

#### .0505 RULE

The rule is represented by the second two digits of the four numbers following a decimal. Rules shall be numbered consecutively starting with Rule .0101.

#### .0506 SUBSECTIONS OF RULES

(a) A rule containing more than one separate idea may need to be subdivided. The codification system within the North Carolina Administrative Code allows for a rule to be subdivided five times as follows: (a), (b), (c); (1), (2), (3); (A), (B), (C); (i), (ii), (iii); (I), (II), (III). All subsections of rules shall be represented by this order, and each label shall be in parentheses.

(b) Points to remember when subdividing a rule are:



(1) When subdividing a rule always subdivide the entire rule into Paragraphs.

(2) Never subdivide a rule too far as it may make the rule hard to understand.

#### .0507 LISTING WITHIN RULES

When a rule is not subdivided but contains a list, the sequence of labels for the lists is: (1), (2), (3); (a), (b), (c); (i), (ii), (iii); (A), (B), (C); (I), (II), (III). If there is a list within a subdivision, the rule shall follow the sequence in Rule .0506(a) of this Section. If the rule is not subdivided, but contains an item or a list which is subdivided, the sequence in this Rule is followed.

### SECTION .0600 - AGENCY RESPONSIBILITY

#### .0601 APA COORDINATORS

Each department, agency, board or commission required by Chapter 150 A B to file rules with the Attorney General's Office Office of Administrative Hearings shall designate an APA coordinator. There shall be only one coordinator designated for each Title or Occupational Licensing Board and the name, address and telephone number of that coordinator shall be filed with the APA section of the Attorney General's Office Office of Administrative Hearings.

If a change occurs within any department, agency, board or commission with regard to the individual designated as APA coordinator, the change shall be forwarded to the APA section of the Attorney General's Office Office of Administrative Hearings within 10 working days.

#### .0602 AGENCY RESPONSIBILITY

Each department, agency, board and commission shall be responsible for proofing the final computer copy of their rules. The department, agency, board, or commission shall have 30 days, unless given prior approval by the Administrative Procedures Section Office of Administrative Hearings, from receipt of line-numbered copies, to notify the Administrative Procedures Section of the Attorney General's Office Office of Administrative Hearings of any typographical errors made by APA.

### SECTION .0700 - ELECTRONIC FILINGS

#### .0701 RULES FILED THROUGH ATMS COMPUTER SYSTEM

(a) If any agency is connected to the State Computer Center, rules may be filed through the ATMS computer system.

(b) The agency shall also submit the Certification of Rulemaking Submission for Filing form and an original copy of rules filed, as required by this Chapter Subchapter.

The rules shall be in the computer system in proper format upon filing.

(c) In using this process, the agency shall submit with the filing a memo with the following:

- (1) agency name
- (2) contact person
- (3) document name  
(storage name)
- (4) operator's number and
- (5) effective date  
of the filing

The Attorney General's Office shall notify the contact person with the transmittal date. At this time, the agency may delete the document from its storage.

(d) In using this process, the agency shall submit with the filing a Electronic Filing Form. The Office of Administrative Hearings shall return a copy of the form notifying the contact person with the transmittal date. At this time, the agency may delete the document from its storage.

### SUBCHAPTER 2B - NORTH CAROLINA REGISTER

#### SECTION .0100 - PUBLICATION

##### .0101 PUBLICATION OF THE NORTH CAROLINA REGISTER

(a) Proposed administrative rules of state agencies and occupational licensing boards, and executive orders shall pursuant to General Statute Chapter 150B be submitted to the Office of Administrative Hearings to be published in the North Carolina Register.

(b) Submissions for publication shall be filed in proper physical form in accordance with the rules in this Subchapter.

##### .0102 STATEMENTS OF ORGANIZATION

(a) State agencies and occupational licensing boards

shall submit a Statement of Organization for publication in the North Carolina Register.

(b) The Statement of Organization shall meet the requirements of G.S. 150B-10 and be submitted to the Office of Administrative Hearings no later than July 1 of each year for publication in the August issue of the North Carolina Register.

.0103 SUBMISSION AND  
PUBLICATION SCHEDULE

(a) In order to be acceptable for publication, submissions for proposed administrative rules and executive orders shall be submitted to the Office of Administrative Hearings by the closing date for the issue as set out in the calendar of closing and issue dates in Paragraph (b) of this Rule.

(b) The closing dates for submission and issue dates for the North Carolina Register are as follows:

NORTH CAROLINA REGISTER  
PUBLICATION DEADLINES AND SCHEDULES  
(April 1986 - April 1987)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Earliest Effective Date
04/15/86	03/25/86	04/01/86	05/15/86	06/14/86	08/01/86
05/15/86	04/24/86	05/01/86	06/14/86	07/14/86	09/01/86
06/16/86	05/27/86	06/03/86	07/16/86	08/15/86	10/01/86
07/15/86	06/25/86	07/02/86	08/14/86	09/13/86	11/01/86
08/15/86	07/28/86	08/04/86	09/14/86	10/14/86	12/01/86
09/15/86	08/26/86	09/02/86	10/15/86	11/14/86	01/01/87
10/15/86	09/25/86	10/02/86	11/14/86	12/14/86	02/01/87
11/14/86	10/23/86	10/30/86	12/14/86	01/13/87	03/01/87
12/15/86	11/25/86	12/02/86	01/14/87	02/13/87	04/01/87
01/15/87	12/29/86	01/05/87	02/14/87	03/16/87	05/01/87
02/16/87	01/26/87	02/02/87	03/18/87	04/17/87	06/01/87
03/16/87	02/23/87	03/02/87	04/15/87	05/15/87	07/01/87

.0104 AVAILABILITY OF THE  
NORTH CAROLINA REGISTER  
The North Carolina Register is published monthly by the Office of Administrative Hearings and is available at a cost of ninety five dollars (\$95

.00) per year subscription. Requests for subscriptions should be directed to the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, N. C. 27604, (919) 733-2678.

SECTION .0200 - GENERAL FILING  
REQUIREMENTS

.0201 PUBLICATION OF  
PROPOSED RULES

(a) In order to be acceptable for publication by the Office of Administrative Hearings, all proposed rules shall be

accompanied by a completed Submission for Notice form.

(b) The original and one copy of the rule as proposed shall be submitted in the Office of Administrative Hearings. The original shall be in proper form as required by Rule .0302 of this Subchapter.

.0202 SUBMISSION FOR NOTICE

(a) The completed Submission for Notice form certifies that the proposed rule(s) being submitted for publication has (have) been officially proposed for notice by the agency.

(b) More than one rule may be listed on a single form if the rules are in the same chapter and the proposed effective dates and the public hearing dates are the same.

.0203 ACCEPTANCE FOR PUBLICATION

When a submission is accepted for publication by the Office of Administrative Hearings, the agency will be given a copy of the Submission for Notice form which indicates that the submission is acceptable for publication.

.0204 REFUSAL OF PUBLICATION

(a) The Office of Administrative Hearings will refuse to accept for publication any proposed rules which do not meet the requirements of this Subchapter.

(b) If the submission for publication is not acceptable, it will be returned to the agency with an indication of the changes needed.

SECTION .0300 - PHYSICAL FORMAT

.0301 GENERAL TYPING  
INSTRUCTIONS

Proposed administrative rules to be published in the North Carolina Register shall be submitted in the form specified in 26 NCAC 2A .0401.

.0302 ORIGINAL COPY OF  
PROPOSED ADOPTIONS

(a) Adoptions

(1) All proposed rules shall be accompanied by an original copy of the proposed text.

(2) The original shall contain an introductory statement in the form specified in 26 NCAC 2A .0403(a).

(3) Following the introductory statement, the body of the rule shall be in the form specified in 26 NCAC 2A .0404.

(b) Amendments

(1) All proposed amendments shall be accompanied by an original copy of the proposed text.

(2) The original shall contain an introductory statement in the form specified in 26 NCAC 2A .0403(a).

(3) Following the introductory statement the body of the rule shall be in the form specified in 26 NCAC 2A .0404 and as follows:

(A) any text to be deleted from the existing rule shall be indicated by slash through marks; and

(B) any text being added shall be underlined.

(4) With prior approval from the Office of Administrative Hearings, an agency may cite the minimum portion of the rule which is changed. Portions published shall give adequate notice of the change(s) to the rule.

(c) Repeals

(1) All proposed repeals shall be accompanied by an original copy which contains an introductory statement in the form specified in 26 NCAC 2A .0403.

(2) Following the introductory statement the submission shall contain a list of the rule number(s) and rule name(s) of the items to be repealed.

SECTION .0400 - ELECTRONIC  
FILINGS

.0401 SUBMISSIONS THROUGH  
ATMS COMPUTER SYSTEM

(a) If an agency is connected to the State Computer Center, submissions for publication in the North Carolina Register may be transferred electronically through the ATMS computer system.

(b) The agency shall submit the Submission for Notice form and original copy of the proposed text as required in this Subchapter. The proposed



text shall be in the computer system in proper format upon submission to the Office of Administrative Hearings.

(c) In using this process, the agency shall submit with the filing an Electronic Filing form. The Office of Administrative Hearings shall return a copy of the form notifying the contact person with the transmittal date. Upon receipt of the form containing the transmittal date, the agency may delete the document from its storage.

### CHAPTER 3 - HEARINGS DIVISION

#### .0001 GENERAL

Governed by the principles of fairness, uniformity, and punctuality, the following general rules apply:

(1) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.

(2) The Office of Administrative Hearings may supply, at the cost of reproduction, forms for use in contested cases. These forms will conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.

(3) Every document filed with the Office of Administrative Hearings shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number.

#### .0002 DEFINITIONS AND CONSTRUCTION

(a) The definitions contained in G.S. 150B-2 are incorporated herein by reference. In addition, the following definitions apply:

(1) "Chief Hearing Officer" means the Director of the Office of Administrative Hearings appointed according to G.S. Chapter 7A, Article 60.

(2) "File or Filing" means to place the paper or item to be filed into the care and custody of the Executive Secretary of the Office of Administrative Hearings, and

acceptance thereof by him, except that the hearing officer may permit the papers to be filed with him in which event the hearing officer shall note thereon the filing date. All documents filed with the Office of Administrative Hearings, except exhibits, shall be in letter size 8 1/2" by 11".

(3) "Hearing Officer" means the person assigned by the Chief Hearing Officer, pursuant to G.S. Chapter 7A, Article 60, and G.S. 150B-32, to hear the contested case.

(4) "Service or Serve" means personal delivery or, unless otherwise provided by rule, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the party at his or her last known address. A Certificate of Service by the person making the service shall be appended to every document requiring service under these Rules. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service or upon delivery, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

(b) The rules of statutory construction contained in Chapter 12 of the General Statutes shall be applied in the construction of these Rules.

#### .0003 COMMENCEMENT OF CONTESTED CASE: NOTICE

(a) A contested case in the Office of Administrative Hearings is commenced by the filing of a petition as required by G.S. 150B-23 together with a Certificate of Service establishing service of a copy of the petition on all other parties.

(b) Within 5 days of the filing of a petition found sufficient by the Office of Administrative Hearings to commence a contested case, the Chief Hearing Officer shall assign a hearing officer to the case. Within 10 days of the filing of a petition commencing a contested case, the Executive Secretary of the Office of Administrative Hearings shall serve a Notice of Contested Case Filing and Assignment upon all who are parties to the dispute.

The notice shall contain the following:

(1) Name of case and date of filing;

(2) Name, address, and telephone number of the hearing officer assigned;

(3) Copy of petition to adverse party if not previously served by petitioner; and

(4) A request for a written response to the petition within 10 days of service of the Notice of Contested Case Filing and Assignment.

#### .0004 ORDER FOR PREHEARING STATEMENTS

The hearing officer may serve all parties with an Order for Prehearing Statements together with or after service of the Notice of Contested Case Filing and Assignment. The parties thus served shall, within 20 days of service, file the requested statements setting out the party's position on the following:

(1) The nature of the proceeding and the issues to be resolved;

(2) A brief statement of the facts and reasons supporting the party's position on each matter in dispute;

(3) A list of facts, conclusions, or exhibits to which the party will stipulate;

(4) A list of proposed witnesses with a brief description of his or her proposed testimony;

(5) A description of what discovery, if any, the party will seek to conduct prior to the contested case hearing and an estimate of the time needed to complete discovery;

(6) Whether the party will order a transcript;

(7) Venue considerations; and

(8) Other special matters.

#### .0005 DUTIES OF THE HEARING OFFICER

In conjunction with the powers of hearing officers prescribed by G.S. 150B-33, the hearing officer shall perform the following duties, consistent with law:

(1) Hear and rule on motions;

(2) Grant or deny continuances;

(3) Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;

(4) Examine witnesses when deemed necessary to make a complete record and to aid in the full development of material facts in the case;

(5) Make preliminary, interlocutory, or other orders as deemed appropriate;

(6) Recommend a summary disposition of the case or any part thereof when there is no genuine issue as to any material fact or recommend dismissal when the case or any part thereof has become moot or for other reasons; and

(7) Apply sanctions in accordance with Rule .0014 of this Chapter.

#### .0006 CONSENT ORDER/SETTLEMENT OR STIPULATION

Informal disposition may be made of any contested case or any issue therein by stipulation, agreement, or consent order at any time during the proceedings. Parties may enter into such agreements on their own or may ask for a settlement conference with a hearing officer of the Office of Administrative Hearings to promote consensual disposition of the case.

#### .0007 SETTLEMENT CONFERENCE

(a) A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

(b) Upon the request of any party or the hearing officer, the Chief Hearing Officer shall assign the case to another hearing officer for the purpose of conducting a settlement conference. Unless both parties and the hearing officer agree, a unilateral request for a settlement conference will not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the hearing officer. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.

(c) All parties shall attend or be represented at a settlement conference. Parties or their representatives shall

be prepared to participate in settlement discussions.

(d) The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

(e) At the settlement conference, the parties shall be prepared to provide information and to discuss all matters required in Rule .0004 of this Chapter.

(f) If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the hearing officer presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the hearing officer who is assigned to hear the case.

#### .0008 PREHEARING CONFERENCE NOTICE

(a) The purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations in regard to foundations for testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, to determine deadlines for the completion of any discovery, to establish hearing dates and locations if not previously set, to consider such other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

(b) Upon the request of any party or upon the hearing officer's own motion he may hold a prehearing conference prior to each contested case hearing. The hearing officer may require the parties to file prehearing statements in accordance with Rule .0004 of these Rules. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing officer. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the

subject of an order by the hearing officer. The hearing officer shall give the parties not less than 15 days notice before the scheduled date of a prehearing conference.

#### .0009 NOTICE OF HEARING

(a) The Office of Administrative Hearings shall give the parties in a contested case a Notice of Hearing not less than 15 days before the hearing, which notice shall contain the following:

(1) Date, time, place, and nature of the hearing;

(2) Name, address, and telephone number of the presiding hearing officer;

(3) A citation to the relevant statutes or rules involved;

(4) A short and plain statement of the factual allegations or issues to be determined;

(5) Notification of the right of a party to represent himself, to be represented by an attorney, or to be represented by a person of his choice if not otherwise prohibited as the unauthorized practice of law;

(6) A citation to the rules of the Office of Administrative Hearings pertaining to contested case hearings and to the contested case provisions of G.S. Chapter 150B and notification of how copies may be obtained;

(7) A brief description of the procedure to be followed at the hearing;

(8) A statement advising the parties to bring to the hearing all documents, records, and witnesses they need to support their positions;

(9) A statement that subpoenas may be available to compel the attendance of witnesses or the production of documents, referring the parties to Rule .0013 of this Chapter relating to subpoenas;

(10) A statement advising the parties that a notice of appearance, containing the name of counsel or other representatives, if any, must be filed with the hearing officer within 10 days of the date of service of the Notice of Hearing if a party intends to appear at the hearing; and

(11) A statement advising the parties that failure to appear at the hearing may result in the allegations of the Notice of Hearing being



taken as true, or the issues set out being deemed proved, and a statement which explains the possible results of the allegations being taken as true or the issues deemed proved.

(b) The Office of Administrative Hearings shall give notice to all parties with a Notice of Hearing either personally or by certified mail or, if those methods are unavailing, in accordance with G.S. 1A-1, Rule 4(jl). In the event that notice is accomplished by certified mail, the delivery date on the return receipt shall be the date of notice.

#### .0010 DISQUALIFICATION OF HEARING OFFICER

Any party may file an affidavit of personal bias or disqualification pursuant to G.S. 150B-32(b). A hearing officer shall withdraw from participation in a contested case if at any time he deems himself disqualified for any reason.

#### .0011 CONSOLIDATION OF CASES

(a) The Chief Hearing Officer of the Office of Administrative Hearings may order a joint hearing of any matters at issue in contested cases involving common questions of law or fact or multiple proceedings involving the same or related parties, or may order the cases consolidated or make other orders to reduce costs or delay in the proceedings. In consolidated cases in the Department of Human Resources involving multiple aggrieved persons, the Chief Hearing Officer shall assign hearing officers of the Office of Administrative Hearings in accordance with G.S. 150B-26.

(b) A party requesting consolidation shall serve a petition for consolidation on all parties to the cases to be consolidated and shall file the original with the Office of Administrative Hearings, together with a Certificate of Service showing service on all parties as herein required. Any party objecting to the petition shall serve and file his objections within 10 days after service of the petition for consolidation.

(c) Upon determining whether cases should be consolidated, the Chief Hearing Officer shall serve a written order on all parties which contains a description of the

cases for consolidation and the reasons for the decision.

(d) Nothing contained in this Rule shall be deemed to prohibit the parties from stipulating and agreeing to a consolidation which shall be granted upon submission of a written stipulation signed by all the parties to the Chief Hearing Officer.

(e) Following receipt of a notice of or order for consolidation, any party may petition for severance by serving it on all other parties and filing it with the Office of Administrative Hearings at least 7 days prior to the first scheduled hearing date. If the Chief Hearing Officer finds that the consolidation will prejudice any party, he shall order the severance or other relief which will prevent the prejudice from occurring.

#### .0012 DISCOVERY

(a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening or complicating the hearings process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties are obliged to exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.

(b) Any means of discovery available pursuant to the North Carolina Rules of Civil Procedure, G.S. 1A-1, is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the hearing officer to obtain an order compelling discovery. In the disposition of the motion, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues in controversy are significant enough to warrant the discovery. In ruling on a motion for discovery, the hearing officer shall recognize all privileges recognized at law.

(c) When a party serves another party with a Request for Discovery, that request need not be filed with the Office of Administrative Hearings but

shall be served upon all parties.

(d) The parties in any contested case shall immediately commence to exchange information voluntarily, to seek access as provided by law to public documents and to exhaust other informal means of obtaining discoverable material.

(e) All discovery shall be completed no later than the first day of the contested case hearing. A hearing officer may shorten or lengthen the period for discovery and adjust hearing dates accordingly and, when necessary, allow discovery during the pendency of the contested case hearing.

(f) No later than 15 days from receipt of a notice requesting discovery, the receiving party shall:

(1) move for relief from the request;

(2) provide the requested information, material or access; or

(3) offer a schedule for reasonable compliance with the request.

(g) Sanctions for failure of a party to comply with an order of the hearing officer made pursuant to the discovery rules of this Chapter shall be as provided for by G.S. 1A-1, Rule 37, and Rule .0014 of this Chapter.

#### .0013 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the hearing officer, shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought, shall identify any documents sought with specificity, shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. Upon receiving such written request or upon his own motion, the hearing officer shall issue the requested subpoenas.

(b) A subpoena shall be served in the manner provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. A party seeking an order imposing sanctions for failure to comply

with any subpoena issued under this Rule must prove proper service of the subpoena.

#### (c) Objection to Subpoena

(1) Upon receipt of a written request for the revocation of a subpoena, the hearing officer shall schedule and conduct a hearing on the motion with not less than 5 days notice to the parties of the date, time, and place of the hearing. The hearing officer shall quash the subpoena if he finds that it is invalid according to law on grounds of relevancy, lack of particularity, or for any other legal insufficiency.

(2) In the case of objections to a subpoena, which objections do not require revocation, the hearing officer may modify the subpoena if it is unreasonable or oppressive, taking into account the issues, costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of the party's case, and whether or not there are alternative methods of obtaining the desired testimony or evidence.

#### .0014 SANCTIONS

(a) If a party fails to appear at a hearing or fails to comply with any interlocutory orders of the hearing officer, the hearing officer may:

(1) Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed proved without further evidence;

(2) Dismiss or grant the motion or petition;

(3) Suppress a claim or defense; or

(4) Exclude evidence.

(b) In the event that any party or attorney at law or other representative of a party engages in behavior that obstructs the orderly conduct of proceedings or would constitute contempt if done in the General Court of Justice, the hearing officer presiding may refer the matter to the Chief Hearing Officer of the Office of Administrative Hearings who may conduct such investigation as he deems necessary and decide whether the matter should be referred to:

(1) The Superior Court for contempt proceedings in accordance with G.S. 150B-33(b)(8); or

(2) The Disciplinary Hearing Commission of the North Carolina State Bar.

.0015 MOTIONS

(a) Any application to the hearing officer for an order shall be by motion which shall be in writing, unless made during a hearing, and must be filed and served upon all parties not less than 10 days before the hearing, if any, is to be held on the motion. The written motion shall advise other parties that opposition to the motion must be in the form of a written response filed with the hearing officer and served on all parties not less than 5 days before the hearing or disposition date requested in the movant's motion. Motions practice in contested cases before the Office of Administrative Hearings shall be governed by Rule 6 of the General Rules of Practice for the Superior and District Courts.

(b) If any party desires a hearing on the motion, he shall make a request for a hearing at the time of the filing of his motion or response. A response shall set forth the nonmoving party's objections. All motions in writing shall be decided without oral argument unless an oral argument is directed by the hearing officer. When oral argument is directed by the hearing officer, a motion shall be considered submitted for disposition at the close of the argument. A hearing on a motion will be directed by the hearing officer only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. All orders on such motions, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record not less than 5 days before a hearing, if any, is held.

.0016 TIME

Unless otherwise provided in the rules of the Office of Administrative Hearings or in a specific statute, time computations in contested cases before the Office of Administrative Hearings shall be governed by G.S. 1A-1, Rule 6.

.0017 INTERVENTION

(a) Any person not named in the notice of hearing who desires to intervene in a

contested case as a party shall file a timely motion to intervene and shall serve the motion upon all existing parties. Timeliness will be determined by the hearing officer in each case based on circumstances at the time of filing. The motion shall show how the movant's rights, duties, or privileges may be determined or affected by the contested case; shall show how the movant may be directly affected by the outcome or that movant's participation is authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate movant's statutory right to intervene if one should exist.

(b) Any party may object to the motion for intervention by filing a written notice of objection with the hearing officer within 5 days of service of the motion if there is sufficient time before the hearing. The notice of objection shall state the party's reasons for objection and shall be served upon all parties. If there is insufficient time before the hearing for a written objection, the objection may be made at the hearing.

(c) When determined to be necessary to develop a full record on the question of intervention, the hearing officer may conduct a hearing on the motion to determine specific standards that will apply to each intervenor, and to define the extent of allowed intervention.

(d) The hearing officer shall allow intervention upon a proper showing under these Rules, unless the hearing officer finds that the movant's interest is adequately represented by one or more parties participating in the case or unless intervention is mandated by statute, rule, or court decision. An order allowing intervention shall specify the extent of participation permitted the intervenor and shall state the hearing officer's reasons. An intervenor may be allowed to:

(1) File a written brief without acquiring the status of a party;

(2) Intervene as a party with all the rights of a party; or

(3) Intervene as a party with all the rights of a



party but limited to specific issues and to the means necessary to present and develop those issues.

#### .0018 CONTINUANCES

Requests for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for continuance of the hearing shall be made in writing to the hearing officer and shall be served upon all parties of record. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance. A request for a continuance filed within 5 days of the hearing shall be denied unless the reason for the request could not earlier have been ascertained.

(1) "Good cause" shall include: death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement, and agreement for a continuance by all parties provided that it is shown that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the case and the parties and the hearing officer have agreed to a new hearing date, or, the parties have agreed to a settlement of the case which has been or will likely be approved by the final decision maker.

(2) "Good cause" shall not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness testimony can be taken by deposition, and failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing. During a hearing, if

it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the hearing officer shall either order the additional testimony taken by deposition or continue the hearing to a future date and oral notice on the record shall be sufficient. A continuance shall not be granted when to do so would prevent the case from being concluded within any statutory or regulatory deadline.

#### .0019 RIGHTS AND RESPONSIBILITIES OF PARTIES

(a) All parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law and policy, and to cross-examine witnesses, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence.

(b) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the hearing officer or as agreed upon at a prehearing conference.

(c) The hearing officer shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the hearing officer shall simultaneously send a copy to all other parties; provided, however, that this requirement shall not apply to requests for subpoenas.

(d) A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

##### (e) Nonparties

(1) With the approval of the hearing officer, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the hearing officer.

(2) The hearing officer may allow nonparties to question witnesses if deemed necessary for the development of a full and complete record.

#### .0020 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the hearing officer's own motion, the hearing officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

#### .0021 EVIDENCE

The North Carolina Rules of Evidence as found in Chapter 8C of the General Statutes shall govern in all contested case proceedings, except as provided otherwise in these Rules and G.S. 150B-29.

(1) The hearing officer may admit all evidence which has probative value, including evidence not reasonably available under Chapter 8C of the General Statutes provided that in such cases the evidence admitted is the most reliable and substantial evidence available. "Reliable and substantial" as used herein refers to evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. Irrelevant, incompetent, and immaterial or unduly repetitious evidence shall be excluded. A hearing officer may, in his discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either:

- (a) necessitate undue consumption of time; or
- (b) create substantial danger of undue prejudice or confusion.

(2) Contemporaneous objections by a party or a party's attorney are not required in the course of a hearing in order to preserve the right to object to the consideration of evidence by the hearing officer in reaching a decision or by the court upon judicial review.

(3) All evidence to be considered in the case, including all records and documents or a true and accurate photocopy, shall be offered and made a part of the record in the

case. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence incorporated by reference may be admitted only if the materials so incorporated are available for examination by the parties.

(4) Documentary evidence in the form of copies or excerpts may be received in the discretion of the hearing officer or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised as to the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy in lieu of the original.

(5) The hearing officer may take notice of judicially cognizable facts by entering a statement of the noticed fact and its source into the record. Upon timely request, any party shall be given the opportunity to contest the facts so noticed through submission of evidence and argument.

(6) A party may call an adverse party or an officer, director, managing agent, or employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate that party by leading questions and contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party. The adverse party may be examined by that party's counsel upon the subject matter of that party's examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

#### .0022 OFFICIAL RECORD

All hearings under the official record thereof under these Rules are open to the public. Official records are subject to public inspection upon reasonable request. A hearing officer may, upon good cause shown, consistent with law, order an official record or a part thereof sealed.

(1) The official record shall be prepared in accordance with G.S. 150B-37(a).

(2) Transcripts of proceedings during which oral evidence is presented will be made only upon request of a party. The requesting party shall pay the cost of such transcript or copy thereof that the party orders and this cost shall include the cost of an original for the Office of Administrative Hearings. Cost shall be determined under supervision of the Chief Hearing Officer who, in cases deemed appropriate by him, may require an advance security deposit to cover the prospective cost. The security deposit shall be applied to the actual cost and any excess shall be returned to the party which submitted it.

.0023 VENUE

Venue shall be determined in accordance with G.S. 150B-24.

.0024 CONDUCT OF HEARING

Hearings shall be conducted, as nearly as practical, in accordance with the practice in the Trial Division of the General Court of Justice.

.0025 HEARING OFFICER'S  
PROPOSAL FOR DECISION:  
EXCEPTIONS

(a) Within 45 days after conclusion of a contested case hearing, the hearing officer shall serve on all parties a copy of his proposed decision, opinion, order, or report containing findings of fact and conclusions of law. Service shall be as provided in Paragraph .0009(b) of this Chapter.

(b) The hearing officer's proposed decision shall be based exclusively on:

(1) The competent evidence and arguments presented during the course of the hearing and made a part of the record;

(2) Stipulations of fact; and

(3) Matters officially noticed.

(c) The proposed decision shall be fully dispositive of all of the issues in the case essential to resolution of the controversy and shall contain:

(1) An appropriate caption;

(2) The appearances of the parties;

(3) A statement of the issues;

(4) References to specific statutes or regulations at issue;

(5) Findings of fact:

(A) Undisputed facts; and

(B) Specific findings on disputed facts;

(6) Conclusions of law based upon specific findings of fact and applicable constitutional principles, statutes, and rules or regulations;

(7) The recommended decision, opinion, order, or report;

(8) In the discretion of the hearing officer, a memorandum giving legal reasons for his findings and conclusions; and

(9) Notice of the right to file exceptions, proposed findings of fact, and proposed forms of order or other disposition and the time within which they must be filed.

.0026 HEARING OFFICER'S  
RECOMMENDATION

(a) Unless the hearing officer has determined in accordance with G.S. 150B-33(b)(9) that rule as applied in the case is void, he shall, within 30 days after the expiration of the period for filing exceptions to the hearing officer's proposed decision, prepare and serve upon all parties his recommended decision, opinion, order, or report which shall become a part of the official record in the case and which shall contain:

(1) All of the items specified in Subparagraphs .0025 (c)(1) through (8) of this Chapter; and

(2) A statement identifying the agency that will make the final decision in the case.

(b) If the hearing officer has determined in accordance with G.S. 150B-33(b)(9) that a rule as applied in the case is void, he shall notify the parties of his decision and of their right to appeal under Article 4 of Chapter 150B.

(c) The hearing officer shall promptly forward a copy of the official record in the case to the agency.

(d) Extensions of time limits.

(1) Upon good cause shown, the Chief Hearing Officer may extend the time limits for submission of the proposed decision, filing of exceptions, and for issuing the recommended decision of the hearing officer.

(2) Requests for extensions must be submitted prior to the expiration of the



period established by these Rules.

(3) Extensions shall not be granted if inattention or procrastination cause delay, but shall be granted if the delay is attributable to honest mistake, accident, or any cause compatible with proper diligence.

.0027 EX PARTE  
COMMUNICATIONS

Ex parte communications are governed by G.S. 150B-35.

.0028 RECONSIDERATION OR  
REHEARING

(a) After a hearing officer has issued a recommended decision, the hearing officer loses jurisdiction to amend the decision except for clerical or

mathematical errors, unless the recommended decision is binding as a final decision pursuant to G.S. 150B-23(a) or G.S. 150B-33(9).

(b) If the recommended decision is binding on the agency as a final decision, a petition for reconsideration or rehearing may be filed with the Office of Administrative Hearings within 10 days of service of the recommended decision upon the petitioning party.

.0029 AVAILABILITY OF COPIES

These Rules and copies of all matters adopted by reference herein are available from the Office of Administrative Hearings at the cost established in 26 NCAC 1 .0001.

# NORTH CAROLINA ADMINISTRATIVE CODE

## LIST OF RULES AFFECTED

EDITION X, NO. 1

EFFECTIVE: APRIL 1, 1986

AGENCY

ACTION TAKEN

**CORRECTION:**

5 NCAC 2E .0702 Amended

**BOARD OF ELECTIONS:**

8 NCAC 7 .0001 - .0002 Adopted

8 NCAC 8 .0001 - .0002 Adopted

**GOVERNOR'S OFFICE:**

9 NCAC 2 EXECUTIVE ORDER NO. 22  
January 8, 1986

9 NCAC 2 EXECUTIVE ORDER NO. 23

January 29, 1986

9 NCAC 2 EXECUTIVE ORDER NO. 24

February 13, 1986

9 NCAC 2 EXECUTIVE ORDER NO. 25

February 21, 1986

**HUMAN RESOURCES:**

10 NCAC 45H .0202 - .0203 Amended

**NATURAL RESOURCES:**

15 NCAC 2D .0501 Amended

15 NCAC 2D .0508 - .0509 Amended

15 NCAC 2D .0514 Amended

15 NCAC 2D .0524 Amended

15 NCAC 2D .0533 Amended

15 NCAC 2D .0535 Amended

15 NCAC 2D .0916 - .0917 Amended

15 NCAC 2H .0603 Amended

15 NCAC 10B .0115(b) Amended

15 NCAC 10F .0303(a)(3) Amended

15 NCAC 10H .1101 - .1103 Adopted

**REVENUE:**

17 NCAC 4A .0003 Amended

17 NCAC 4A .0005 Amended

17 NCAC 4B .0103 Amended

17 NCAC 4B .3413 - .3414 Adopted

17 NCAC 4C .0301 Amended

17 NCAC 4D .0505 Amended

17 NCAC 4D .0507 Amended

17 NCAC 4E .0103 Amended

17 NCAC 4E .0201 - .0202 Amended

17 NCAC 4E .0205 Amended

17 NCAC 4E .0207 - .0208 Repealed

17 NCAC 4E .0209 Amended

17 NCAC 4E .0301 Amended

17 NCAC 4E .0402 Amended

17 NCAC 4E .0601 Amended

17 NCAC 4E .0705 Repealed

17 NCAC 7B .0104 Amended

17 NCAC 7B .0603 Amended

17 NCAC 7B .3901 Amended

17 NCAC 7B .4002 Amended

17 NCAC 7B .4515 Repealed

17 NCAC 7B .4701 Amended

**TRANSPORTATION:**

19A NCAC 2E .0217 - .0219 Amended

19A NCAC 2E .0221 - .0222 Amended

19A NCAC 2E .0701 - .0702 Amended

19A NCAC 3D .0803 - .0827 Adopted

19A NCAC 4A .0005 - .0006 Amended

## TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT
1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department
8	Elections, State Board of
9	Governor
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control, Department of
15	Natural Resources and Community Development
16	Education, Department of
17	Revenue, Department of
18	Secretary of State
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Independent Agencies
25	Personnel, Department of State
26	Office of Administrative Hearings

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

CHAPTER	LICENSING BOARD
2	Architecture, Board of
4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
30	Law Examiners, Board of
31	Marital & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapist, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in
44	Osteopathic Examination and Registration
46	Pharmacy, Board of
48	Physical Therapy, Examining Committee of
50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board



CUMULATIVE INDEX  
(April 1, 1986 - March 31, 1987)  
Volume 1, Issue 1, Pages 1-73

AO - Administrative Order  
E - Errata  
EO - Executive Order  
FR - Final Rule  
GS - General Statute  
JO - Judicial Order  
LRA - List of Rules Affected  
PR - Proposed Rule  
SD - Statement of Organization  
TR - Temporary Rule

ADMINISTRATIVE ORDERS

Beecher Reynolds Gray, 47 AO  
Fred Gilbert Morrison, Jr., 48 AO  
Angela Rebecca Bryant, 49 AO  
Thomas R. West, 50 AO

EXECUTIVE ORDERS

Executive Orders 1-25, 23-44 EO

GENERAL STATUTES

Chapter 7A 21-22  
Chapter 150B, 3-21 GS

JUDICIAL ORDERS

Appointment  
Robert A. Melott, 45 JD

LIST OF RULES AFFECTED

Volume 10, No. 1  
(April 1, 1986), 71 LRA

OFFICE OF ADMINISTRATIVE HEARINGS

General, 52 PR  
Hearings Division, 61 PR  
Rules Division, 52 PR

STATEMENTS OF ORGANIZATION

Office of Administrative Hearings, 51 SO



Office of Administrative Hearings  
P. O. Drawer 11666  
Raleigh, North Carolina 27604

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## NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

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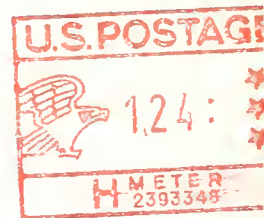
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