

26 NCAC 01 .0103 is amended as published in 35:20 NCR 2271 as follows:

26 NCAC 01 .0103 COST TO PUBLIC

(a) Copies of any public ~~records documents~~ filed in the Office of Administrative Hearings are available at the "actual cost" as defined in G.S. ~~132-6.2(b). 132-6.2(b) for making the copy and mailing cost if applicable.~~ The Office of Administrative Hearings OAH shall provide its "actual cost" on the Office of Administrative Hearings OAH website.

~~(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 any other applicable cost for the public document. Electronic copy certification is not available.~~

~~(c) Transcripts are available of contested case hearings. Procedures for requesting and costs of transcripts are in 26 NCAC 03 .0123.~~

~~(d) Copies of recordings are available in the original recording format and media only.~~

~~(e) Video conferencing fees including cancellation fees shall be paid by the requesting party. The video conferencing fees are set at the rates established by the Office of Information Technology Services (ITS).~~

~~(f) North Carolina sales tax shall be added if applicable.~~

~~(b)(g)~~ There is no charge to the requesting party unless the actual cost total charge is equal to or exceeds ten dollars (\$10.00). ~~three dollars (\$3.00).~~

History Note: Authority G.S. 7A-751; 132-6.2; 150B-19; 150B-21.25; 150B-37;

Eff. August 1, 1986;

Amended Eff. April 1, 1990; January 1, 1989;

Recodified from 26 NCAC 1 .0001 Eff. January 1, 1991;

Amended Eff. April 1, 2009; May 1, 2001; August 1, 2000; February 1, 1994; August 2, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;

Amended Eff. August 1, 2021

REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of Administrative Hearings

RULE CITATION: 26 NCAC 03 .0123

DEADLINE FOR RECEIPT: July 7, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 8—Delete or define “nationally certified.”

Line 9—Use of “report” is not consistent with the AOC language. AOC uses “prepares transcripts of.” Language should be consistent.

Lines 10-11—Clarify whether “procured directly” refers to the hearing assistant, the court reporter, or both. Break out this into a separate sentence for clarification.

Line 14—Add “for the cancellation” following “the party responsible.”

Line 14—To whom shall the “cancellation notice” be provided?

Line 22—Use of “in the General Court of Justice” is not consistent with the AOC language. The language used by AOC is “in the courts of all counties.” Language should be consistent.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

26 NCAC 03 .0123 is amended with changes as published in 35:20 NCR 2271 as follows:

26 NCAC 03 .0123 OFFICIAL RECORD

(a) The official record of a contested case shall be available for public inspection upon request. An administrative law judge may, consistent with law, order ~~part or all~~ or part of an official record sealed.

(b) The official record shall be prepared in accordance with G.S. 150B-37(a).

(c) Contested case hearings shall be recorded either by a hearing assistant provided by the Office of Administrative Hearings ~~four track recording system~~ or a nationally certified court reporter listed by the North Carolina Administrative Office of the Courts as authorized and approved to report ~~[prepare transcripts of]~~ proceedings held in the General Court of Justice ~~[by the Administrative Office of the Courts]~~ procured directly by one or more parties to the contested case, ~~using stenomask or stenotype.~~

~~(d) Transcript costs incurred shall be divided equally among the party(ies) requesting a transcript.~~

~~(e) Any other costs incurred when using a court reporter shall be divided equally among the requesting party(ies).~~

~~(d)(f) If a contested case hearing is cancelled, the party responsible shall provide a 24-hour cancellation notice is required in all cases in which a hearing assistant is provided by the Office of Administrative Hearings. The party(ies) responsible for the cancellation are liable for any cancellation fees.~~

~~(e)(g) Transcripts of proceedings held in the Office of Administrative Hearings during which oral evidence is presented shall be made only upon request of a party. OAH shall contract with an independent contractor to provide transcript services. When proceedings are recorded by a court reporter, transcript requests shall must be made directly to the court reporter. When proceedings are recorded by a hearing assistant, transcript requests shall be made directly to a transcriptionist listed by the North Carolina Administrative Office of the Courts as authorized and approved to prepare transcripts of proceedings held in the General Court of Justice. [by the Administrative Office of the Courts.] independent contractor. The name and phone number of the independent contractor may be obtained by calling the Office of Administrative Hearings. Transcript costs shall be provided to the requesting party by the independent contractor. An attorney requesting a transcript on behalf of a party shall be a guarantor of payment of the cost. The independent contractor may require an advance security deposit to cover the prospective cost.~~

(f) A party who orders a transcript shall use an Office of Administrative Hearings Transcript Contract form to order the transcript, which shall include the following information:

- (1) case name and number;
- (2) requestor information; and
- (3) transcriptionist information.

That form is available on the Office of Administrative Hearings website at <https://www.oah.nc.gov> and may be obtained from the Chief Hearings Clerk upon request. The party ordering the transcript shall file the transcript contract with the Office of Administrative Hearings and shall serve the transcript contract on all other parties and the transcriptionist. The transcriptionist shall deliver the transcript to the parties and file the transcript with the Office of Administrative Hearings by email to oah.clerks@oah.nc.gov in PDF format no later than 30 days after having been served with the transcript contract.

1 ~~(g)(h)~~ Copies of recordings made by a hearing assistant are available upon written request at a cost set out in 26 NCAC
2 01 .0103.

3 ~~(i) Copies of OAH Hearings recordings or non OAH certified transcripts therefrom are not part of the official record.~~
4 ~~Note: Rule 5.3(B) of the Rules of Professional Conduct permits an attorney to advance or guarantee expenses of~~
5 ~~litigation provided the client remains ultimately liable for such expenses.~~

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7 *History Note: Authority G.S. 7A-751; 150B-37;*

8 *Eff. August 1, 1986;*

9 *Amended Eff. August 1, 1998; April 1, 1990; February 1, 1989; November 1, 1987;*

10 *September 1, 1986;*

11 *Recodified from Rule .0122 Eff. August 1, 2000;*

12 *Amended Eff. April 1, 2009;*

13 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,*
14 *2016;*

15 *Amended Eff. August 1, 2021.*
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