

1 26 NCAC 03 .0103 is amended with changes as published in 28:14 NCR 1637 as follows:

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3 **26 NCAC 03 .0103 COMMENCEMENT OF CONTESTED CASE: NOTICE AND FILING FEE**

4 (a) A contested case in the Office of Administrative Hearings is commenced by the filing of a petition as required  
5 by G.S. 150B-23 and payment of the appropriate filing fee (if a fee is required by G.S. 150B-23.2).

6 (b) Within five days of filing a petition to commence a contested case, the Chief Administrative Law Judge shall  
7 assign an administrative law judge to the case. Within ten days of the filing of a petition commencing a contested  
8 case, the chief hearings clerk of the Office of Administrative Hearings shall serve a Notice of Contested Case Filing  
9 and Assignment upon all who are parties to the dispute. The notice shall contain the following:

- 10 (1) Name of case and date of filing;  
11 (2) Name, address, and telephone number of the administrative law judge; and  
12 (3) A request that the party send within 30 days a copy of the document constituting the agency action  
13 that caused the filing of the petition.

14 (c) In contested cases commenced by a person aggrieved involving the following causes of action, the petitioner  
15 shall pay a filing fee of one hundred twenty-five dollars (\$125.00):

- 16 (1) Contested cases challenging certificate of need filed pursuant to G.S. 131E-188;  
17 (2) Contested cases challenging permit actions under G.S. 143-215.1, G.S. 143-215.10C, G.S. 143-  
18 215.15, and G.S. 143-215.108;  
19 (3) Contested cases where the amount in controversy is fifty thousand dollars (\$50,000) or greater.

20 (d) In contested cases commenced by a person aggrieved which do not involve the causes of action listed in  
21 Paragraph (c) of this Rule, the petitioner shall pay a fee of twenty dollars (\$20.00).

22 (e) The filing fee shall be waived in a contested case in which the petition is filed in forma pauperis and supported  
23 by such proofs as are required in G.S. 1-110. A petitioner seeking to have the filing fee waived under this Paragraph  
24 shall file the appropriate OAH form with the chief hearings clerk simultaneously when filing the petition for a  
25 contested case.

26 (f) The filing fee shall be waived in a contested case involving a mandated federal cause of action.

27 (g) If the filing fee is not [paid]paid, or is paid in an incorrect [amount] amount, at the time of filing, the Office of  
28 Administrative Hearings shall notify the petitioner in writing and permit a late payment of the filing fee to be made  
29 within 60 days of the date the petition was filed. If the filing fee is not paid as provided herein, the petition may be  
30 dismissed at the discretion of the assigned Administrative Law Judge.

31 (h) The filing fee shall be [refunded in a contested case in which the losing party is the State as set forth in Rule  
32 .0105 of this Section.]reimbursed when applicable in accordance with 26 NCAC 03 .0105(7) of this Section.

33 ~~(g)~~(i) The method of payment of the filing fee shall be:

- 34 (1) cash;  
35 (2) money order;  
36 (3) certified check; or  
37 (4) check drawn on an attorney's trust or operating account.  
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1 *History Note: Authority G.S. 150B-23; 150B-23.2; 150B-33;*  
2 *Eff. August 1, 1986;*  
3 *Amended Eff. October 1, 1991; November 1, 1987; September 1, 1986;*  
4 *Emergency Amendment Eff. October 1, 2009;*  
5 *Temporary Amendment Eff. December 1, 2009;*  
6 *Amended Eff. May 1, 2014; October 1, 2010.*  
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1 26 NCAC 03 .0132 is adopted with changes as published in 28:14 NCR 1637 as follows:

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3 **26 NCAC 03 .0132 ASSESSMENT OF REASONABLE ATTORNEYS' AND WITNESS' FEES BY**  
4 **THE ADMINISTRATIVE LAW JUDGE**

5 (a) In ordering the assessment of attorney fees pursuant to G.S. 150B-33(b)(11), the administrative law judge shall  
6 award:

- 7 (1) ~~attorney~~ attorneys' fees at a reasonable hourly rate based on the prevailing market rate but at a rate  
8 no higher than the fee agreement between the parties;
- 9 (2) ~~Law Clerk, Paralegal, or Legal Assistant~~ legal support staff fees at a reasonable hourly rate based  
10 on the prevailing market rate but at a rate no higher than the fee agreement between the parties;  
11 and
- 12 (3) travel time at a maximum rate of one-half the applicable hourly attorney or legal support staff fee  
13 rate.

14 (b) ~~Attorney and witness~~ Attorneys' and witness' fees shall be documented by an itemized--per activity--accounting  
15 of the hours expended, in addition to a copy of the fee agreement between the parties and any ~~relevant receipts or~~  
16 ~~other supporting~~ documentation of prior payment-payment of fees.

17 (c) In determining the prevailing market rate in Subparagraph (a)(1) of this Rule, the administrative law judge shall  
18 consider the complexity of the case and the experience of the attorney. The fee shall be commensurate with others  
19 in the area with similar experience and expertise.

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21 *History Note: Authority G.S. 7A-751; 150B-33(b)(11);*

22 *Eff. May 1, 2014.*

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