

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Board of Architecture

RULE CITATION: 21 NCAC 02 .0703

DEADLINE FOR RECEIPT: September 9, 2015

NOTE WELL: *This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 1, line 6: The phrase "date, time, and place for responding to the subpoena" is not consistent with (b)(2), which states "date, time and location of the hearing in which the witness is commanded to appear." For clarity, please modify this phrase in line 6, perhaps as follows: "date, time, and location in which the witness is commanded to appear."

Page 1, line 9: Please break subparagraph (1) into two subparagraphs, as follows:

- (1) the caption of the case;*
- (2) the name and address of the person subpoenaed;*

Page 1, lines 10: Please insert a comma after "hour."

Page 1, line 13: Please break subparagraph (4) into two subparagraphs, as follows:

- (5) the identity of the party...;*
- (6) the date of issue;*

Page 1, line 15: Please replace "as filled out, shows" with "as filled out pursuant to Paragraph (c) of this Rule, shall include...."

Page 1, line 15-17: Please list the items beginning with "the name and capacity" in parts (A), (B), (C), etc. under subparagraph (6) (Subparagraph (8) if renumbered as requested above).

Page 1, line 19: Paragraph (c) requires the person who serves the subpoena to fill out the return of service form. The items to be filled out appear to be those listed in (b)(6) ((b)(8) if renumbered as requested above). If this is the case, please modify "the 'return of service' form for each copy..." to read as follows: modify "the 'return of service' form, as required in Subparagraph (b)(8) of this Rule, for each copy..."

Page 1, line 24: Please delete the comma after "sought."

Jason S. Thomas
Commission Counsel

Date submitted to agency: August 26, 2015

Page 1, line 33: Please insert a comma after “party or parties.”

Please delete the citation to G.S. 150B-11 as Authority in your History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609-6700.

Jason S. Thomas
Commission Counsel
Date submitted to agency: August 26, 2015

21 NCAC 02 .0703 is readopted without change as published in 29:22 NCR 2541) as follows:

21 NCAC 02 .0703 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 Board, shall identify any document sought with specificity, and 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. The Board shall issue the requested subpoenas within five days of receipt of the request.

(b) Subpoenas shall contain:

(1) the caption of the case; the name and address of the person subpoenaed;

(2) the date, hour and location of the hearing in which the witness is commanded to appear;

(3) a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any;

(4) the identity of the party on whose application the subpoena was issued; the date of issue;

(5) the signature of one of the members of the Board or the Board's Secretary; and

(6) a "return of service." The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office.

(e) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(f) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(g) The party who requested the subpoena, in such time as may be granted by the presiding officer, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

(h) After receipt of the objection and response thereto, if any, the presiding officer shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(i) After the close of such hearing, a majority of the Board members hearing the contested case shall rule on the challenge and issue a written decision. A copy of the decision shall be issued to all parties and made a part of the record.

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History Note: Authority G.S. 83A-6; 150B-11; 150B-38; 150B-39;
Eff. February 1, 1976; October 1, 2015
Readopted Eff. September 29, 1977; October 17, 2015
Amended Eff. November 1, 2010; May 1, 1989.