

1 26 NCAC 03 .0101 is amended with changes as published in 30:10 NCR 1160 as follows:

2
3 **CHAPTER 03 - HEARINGS DIVISION**

4
5 **SECTION .0100 - HEARING PROCEDURES**

6
7 **26 NCAC 03 .0101 GENERAL**

8 ~~(a) The rules in this Chapter in effect on January 1, 2012 shall apply to contested cases commenced on or after January~~
9 ~~1, 2012. The rules in this Chapter in effect on December 31, 2011 shall apply to contested cases commenced on or~~
10 ~~before December 31, 2011.~~

11 ~~(b)~~(a) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and
12 District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes
13 shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule
14 of the Office of Administrative Hearings provides otherwise.

15 ~~(c) The Office of Administrative Hearings shall supply forms for use in contested cases. These forms shall conform~~
16 ~~to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.~~

17 ~~(d)~~(b) The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings
18 in the OAH electronic filing system (e-OAH), by facsimile (fax), or by electronic mail by with an attached file either
19 in PDF format or a document compatible with the most recent version of Microsoft Word. Microsoft Word
20 2007-[2013.] Faxed documents shall be sent to: (919) 431-3100. Electronic mail with attachment shall be sent by
21 electronic transmission to: oah.clerks@oah.nc.gov. The faxed or electronic mail with attachment documents shall be
22 deemed a "filing" within the meaning of 26 NCAC 03 .0102(a)(2) provided the original signed document, one copy
23 document and the appropriate filing fee (if a fee is required by G.S. 150B-23.2) is received by OAH within seven
24 business days following the faxed or electronic transmission. transmission of the faxed or electronic mail with
25 attachment documents. Other electronic transmissions, for example, electronic Electronic mail without attached file
26 as specified in this Paragraph, Paragraph shall not constitute a valid filing with the Office of Administrative Hearings.
27 (e) Every pleading and other documents filed with OAH shall be signed by the ~~attorney~~ attorney, mediator, or other
28 party who prepared the document, ~~if it was prepared by an attorney,~~ and shall contain ~~his~~ the preparer's name, mailing
29 address, electronic mail address, and telephone number. number, and Documents prepared by an attorney shall have
30 the attorney's North Carolina State Bar number. An original and one copy of each document shall be filed.

31 (f) Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in this
32 Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge
33 has been assigned to preside in the contested case.

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35 *History Note: Authority G.S. 7A-750; 7A-751(a); 150B-23.2; 150B-23.3; 150B-40(c);*

36 *Eff. August 1, 1986;*

37 *Amended Eff. May 1, 2009; January 1, 2006; April 1, 2004; April 1, 2001; August 1, 2000; February*
38 *1, 1994; July 1, 1992; May 1, 1989; January 1, 1989;*

39 *Emergency Amendment Eff. October 1, 2009;*

1 *Temporary Amendment Eff. December 1, 2009;*
2 *Amended Eff. October 1, 2010;*
3 *Temporary Amendment Eff. January 1, 2012;*
4 *Amended Eff. March 1, 2016; November 1, 2012.*
5

1 26 NCAC 02C .0102 is amended as published in 30:10 NCR 1160 as follows:

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3 **26 NCAC 03 .0102 DEFINITIONS AND CONSTRUCTION**

4 (a) The definitions contained in G.S. 150B-2 are incorporated herein by reference. In addition, the following
5 definitions apply:

6 (1) "Chief Administrative Law Judge" means the person appointed according to G.S. 7A-752.

7 (2) ~~"File or Filing"~~ "File" or "Filing" ~~means means:~~

8 (A) to place the paper or item to be filed into the care and custody of the chief hearings clerk
9 of the Office of Administrative Hearings, and acceptance thereof by the clerk, him, except
10 that when a party submits a document for filing to the administrative law judge during the
11 course of a contested case hearing and the filing is accepted by the administrative law
12 judge, may permit the papers to be filed with him in which event the administrative law
13 judge shall note thereon the filing date. All documents filed with the Office of
14 Administrative Hearings, except exhibits, shall be in duplicate in letter size 8 1/2 by 11" 8
15 1/2" by 11"; or

16 (B) electronic filing as defined in 26 NCAC 03 .0501(1).

17 (3) ~~"Service or Serve"~~ "Service" or "Serve" ~~means means:~~

18 (A) delivery by electronic mail with an attached file in a format that is readily accessible to the
19 recipient;

20 (B) delivery by facsimile (fax);

21 (C) personal delivery;

22 (D) delivery by first class United States Postal Service mail; ~~or~~

23 (E) delivery by overnight express mail ~~service~~ service; or

24 (F) electronic service as defined in 26 NCAC 03 .0501(4).

25 (b) A Certificate of Service by the person making the service shall be appended to every document requiring service
26 under these Rules.

27 (c) Service by mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to
28 be served, in an official depository of the United States Postal Service.

29 (d) Service by overnight express mail ~~is~~ complete upon placing the item to be served, enclosed in a wrapper addressed
30 to the person to be served, in the custody of an overnight express mail service.

31 (e) Service by electronic mail or fax ~~is~~ shall be deemed to occur one hour after it is sent, provided that:

32 (1) documents sent after 5 pm are deemed sent at 8 am the following business day; and

33 (2) documents sent by electronic mail or fax that are not readable in a format in which the content is
34 readily accessible to the recipient are not deemed ~~served served~~ until actually received in a form
35 in which the content is readily accessible to the receiving party. Within five business days of ~~receipt,~~
36 receipt of an unreadable document, the receiving party shall notify the sending party of the

1 ~~unreadability of that the document document. sent by electronic mail is not in a format readily~~
2 ~~accessible to the recipient.~~

3 Service by electronic mail or fax is treated the same as service by mail for the purpose of adding three days to the
4 prescribed period to respond under ~~N.C.R. Civ.P. (6)(e)~~ Rule 6(e) of the Rules of Civil Procedure as contained in G.S.
5 1A-1.

6 (f) The rules of statutory construction contained in Chapter 12 of the General Statutes shall be applied in the
7 construction of these Rules.

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9 *History Note: Authority G.S. 7A-752; 150B-23; 150B-23.3;*

10 *Eff. August 1, 1986;*

11 *Amended Eff. October 1, 1991; January 1, 1989; November 1, 1987; September 1, 1986;*

12 *Temporary Amendment Eff. January 1, 2012;*

13 *Amended Eff. March 1, 2016; November 1, 2012.*

1 26 NCAC 03 .0501 is adopted as published in 30:10 NCR 1160 as follows:
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3 **SECTION .0500 – ELECTRONIC FILING**
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5 **26 NCAC 03 .0501 DEFINITIONS**

6 In addition to the definitions contained in G.S. 150B-23.3, the following terms shall mean:

- 7 (1) "Electronic filing" or "filed electronically" means the electronic transmission of the petition, notice
8 of hearing, pleadings, or any other documents filed in a contested case with the Office of
9 Administrative Hearings by uploading to the case docket using the OAH electronic filing system (e-
10 OAH) accessed through a link on the OAH website at www.ncoah.com.
11 (2) "Electronic Filing Service Provider (EFSP)" means the service provided by the Office of
12 Administrative Hearings for electronic filing and electronic service of documents by way of the
13 Internet accessed through a link on the OAH website at www.ncoah.com.
14 (3) "Electronic signature" or "signed electronically" means a graphic version of the e-OAH user's
15 signature or "s/" followed by the e-OAH user's typewritten name. This shall be the legal equivalent
16 of the e-OAH user's handwritten signature.
17 (4) "Electronic service" or "served electronically" means the electronic transmission of the petition,
18 notice of hearing, pleadings, or any other documents to an attorney, mediator, or party utilizing the
19 attorney's, mediator's, or party's electronic mail address registered with the Office of Administrative
20 Hearings in e-OAH.
21 (5) "Filed" means received by the chief hearings clerk of the Office of Administrative Hearings in e-
22 OAH.

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24 *History Note: Authority G.S. 7A-750; 150B-23; 150B-23.3;*
25 *Eff. March 1, 2016.*
26

1 26 NCAC 03 .0502 is adopted as published in 30:10 NCR 1160 as follows:

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3 **26 NCAC 03 .0502 GENERAL**

4 (a) The Office of Administrative Hearings shall permit documents filed and served in a contested case to be filed and
5 served electronically by means of the Electronic Filing Service Provider. All attorneys, mediators, and other parties
6 using e-OAH shall register to use the system through a link on the OAH website at www.ncoah.com. All e-OAH
7 users shall keep current their electronic mail address in e-OAH.

8 (b) In contested cases filed in e-OAH, registration as an e-OAH user constitutes waiver of the right to receive notice
9 or service by first class mail, certified mail, or personal delivery, and consent to electronic service and receipt of
10 contested case documents at the e-OAH user's electronic mail address registered in e-OAH.

11 (c) An e-OAH user shall be responsible for the readability of any document filed or served electronically by that user.
12 Within five business days of receipt of an unreadable document filed or served electronically, the receiving party shall
13 notify the sending party of the unreadability of the document.

14 (d) Pleadings and other documents filed or served electronically shall contain the electronic signature of the attorney,
15 mediator, or party who prepared the document and the preparer's name, mailing address, electronic mail address, and
16 telephone number. Documents prepared by an attorney shall have the attorney's North Carolina State Bar number.

17 (e) Documents filed in e-OAH are filed when received by the chief hearings clerk of the Office of Administrative
18 Hearings. Upon completion of filing, the clerk shall send the e-OAH user a confirmation receipt that includes the date
19 and time of filing which shall be proof of filing.

20 (f) Documents filed electronically after 5 pm shall be deemed filed at 8 am the following business day.

21 (g) An e-OAH filing in a contested case shall be served electronically on all other attorneys or other parties in that
22 contested case and shall include a certificate of service.

23 (h) Electronic service shall be treated as the same as service by mail for the purpose of adding three days to the
24 prescribed period to respond under Rule 6(e) of the Rules of Civil Procedure as contained in G.S. 1A-1.

25 (i) A subpoena issued in a contested case by the chief hearings clerk of the Office of Administrative Hearings shall
26 be signed electronically by the clerk.

27 (j) In contested cases filed electronically, the applicable filing fee shall be:

28 (1) forwarded by first class mail or overnight express mail contemporaneously with the electronic filing;

29 (2) paid personally to the chief hearings clerk of the Office of Administrative Hearings within five
30 business days of the filing; or

31 (3) paid by electronic funds transfer.

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33 *History Note: Authority G.S. 7A-750; 150B-23; 150B-23.2; 150B-23.3;*
34 *Eff. March 1, 2016.*
35

1 26 NCAC 03 .0503 is adopted as published in 30:10 NCR 1160 as follows:

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3 **26 NCAC 03 .0503 REGISTRANTS**

4 Only attorneys, mediators, and other parties associated with a contested case docket shall be permitted to register with
5 e-OAH.

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7 *History Note: Authority G.S. 7A-750; 150B-23; 150B-23.3;*

8

Eff. March 1, 2016.

9

1 26 NCAC 03 .0504 is adopted as published in 30:10 NCR 1160 as follows:

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3 **26 NCAC 03 .0504 INTEGRATION WITH OTHER RULES**

4 The rules in this Section are intended to supplement the other rules in this Chapter. In the event of a conflict, the rules
5 in this Section shall control with respect to contested cases filed in e-OAH.

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7 *History Note:* *Authority G.S. 7A-750; 150B-23.3;*

8 *Eff. March 1, 2016.*

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