

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

CHAPTER 03 - HEARINGS DIVISION

SECTION .0100 - HEARING PROCEDURES

26 NCAC 03 .0101 GENERAL

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

(b)(a) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes 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.

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

(d)(b) The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings in the OAH electronic filing system (e-OAH), by facsimile (fax), or by electronic mail with an attached file either in PDF format or a document compatible with the most recent version of Microsoft Word. Microsoft Word 2007.[2013.] Faxed documents shall be sent to: (919) 431-3100. Electronic mail with attachmentattached file shall be sent by electronic transmission to: oah.clerks@oah.nc.gov. The faxed documents or electronic mail with [attachment] documentsattached file shall be deemed a "filing" within the meaning of 26 NCAC 03 .0102(a)(2) provided the original signed document, one copy [document]filing and the appropriate filing fee (if a fee is required by G.S. 150B-23.2) isare received by OAH within seven business days following the faxed or electronic transmission-transmission of the faxed documents or electronic mail with [attachment documents]attached file. Other electronic transmissions, for example, electronic Electronic mail without an attached file as specified in this Paragraph, Paragraph shall not constitute a valid filing with the Office of Administrative Hearings.

(e) Every pleading and other documents filed with OAH shall be signed by the ~~attorney~~ attorney, mediator, or other party who prepared the document, ~~if it was prepared by an attorney~~, and shall contain ~~his~~ the preparer's name, mailing address, electronic mail address, and telephone number. number, and Documents prepared by an attorney shall have the attorney's North Carolina State Bar number. An original and one copy of each document shall be filed.

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

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

Eff. August 1, 1986;

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

1 *Emergency Amendment Eff. October 1, 2009;*
2 *Temporary Amendment Eff. December 1, 2009;*
3 *Amended Eff. October 1, 2010;*
4 *Temporary Amendment Eff. January 1, 2012;*
5 *Amended Eff. March 1, 2016; November 1, 2012.*
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26 NCAC 03 .0102 is amended with change as published in 30:10 NCR 1160 as follows:

26 NCAC 03 .0102 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 Administrative Law Judge" means the person appointed according to G.S. 7A-752.

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

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

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

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

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

(B) delivery by facsimile (fax);

(C) personal delivery;

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

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

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

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

(c) Service by 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.

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

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

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

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

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

Service by electronic mail or fax is treated the same as service by mail for the purpose of adding three days to the 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. 1A-1.

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

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

Eff. August 1, 1986;

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

Temporary Amendment Eff. January 1, 2012;

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