

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of Administrative Hearings

RULE CITATION: 26 NCAC 03 .0120 and .0502

Commissioners Currin and Bryan reviewed these rules prior to the Commission's next meeting. The Commission has not yet reviewed these rules and therefore there has not been a determination as to whether the rules will be approved.

In reviewing these rules, the Commissioners requested the following technical changes:

In 26 NCAC 03 .0120, on line 12, add "or herself" after "himself." On line 23, add "the administrative law judge knows that" after "if" if that is what you mean. Is there some type notification required in some other rule?

In .0502(k), the phrase, "is subject to," is awkward language. Please change it to something like "experiences" each place it appears.

26 NCAC 03 .0120 is amended as published in 31:12 NCR 1251 as follows:

**26 NCAC 03 .0120            RIGHTS AND RESPONSIBILITIES OF PARTIES**

(a) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the administrative law judge or agreed upon at a prehearing conference.

(b) The administrative law judge shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the administrative law judge shall simultaneously send a copy to all other parties.

(c) All parties have the continuing responsibility to notify the Office of Administrative Hearings of their current address and telephone number.

(d) A party may represent himself or be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(e) With prior notice to the administrative law judge, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the administrative law judge.

(f) Prior to issuing a decision, the administrative law judge may order any party to submit proposed findings of fact and written arguments.

(g) The Administrative Law Judge may allow remote participation via audio or video conference by participant(s) subject to available services at the hearing location. Requests for remote participation shall be made at least seven days in advance and are subject to equipment, staff, and scheduling availability.

(h) The administrative law judge shall not proceed to consideration of dispositive motions or a hearing on the merits in a contested case if an unrepresented party is seeking pro bono or reduced fee legal assistance, unless the administrative law judge has determined that acquisition of such legal assistance by the unrepresented party is improbable based on the circumstances, such as the failure of the unrepresented party to procure legal assistance after multiple attempts.

*History Note:    Authority G.S. 7A-751(a); 150B-25; 150B-33; 150B-34;  
Eff. August 1, 1986;  
Amended Eff. October 1, 1991; April 1, 1990; November 1, 1987;  
Recodified from Rule .0119 Eff. August 1, 2000;  
Amended Eff. May 1, 2009; April 1, 2001;  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Augustus B. Elkins, II declared Rule 26 NCAC 03 .0120(d) void as applied in Abundant Life Child Care Center, Tiffany D. Monroe v. Division of Child Development, June Locklear, Brenda Faircloth (08 DHR 2954);  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;  
Amended Eff. April 1, 2017.*

26 NCAC 03 .0502 is amended as published in 31:12 NCR 1251 as follows:

**26 NCAC 03 .0502           GENERAL**

(a) The Office of Administrative Hearings shall permit documents filed and served in a contested case to be filed and served electronically by means of the Electronic Filing Service Provider. All attorneys, mediators, and other parties using e-OAH shall register to use the system through a link on the OAH website at [www.ncoah.com](http://www.ncoah.com). All e-OAH users shall keep current their electronic mail address in e-OAH. When all attorneys and unrepresented parties to a contested case are registered in e-OAH, all documents filed and served in that contested case shall be filed and served electronically by means of the Electronic Filing Service Provider.

(b) In contested cases filed in e-OAH, registration as an e-OAH user constitutes consent to electronic service and receipt of contested case documents, including a notice of hearing given by OAH, by means of the Electronic Filing Service Provider.

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

(d) Pleadings and other documents filed or served electronically shall contain the electronic signature of the attorney, mediator, or party who prepared the document and the preparer's name, mailing address, electronic mail address, and telephone number. Documents prepared by an attorney shall have the attorney's North Carolina State Bar number. An attorney registered as an e-OAH user in a non-Medicaid contested case shall electronically file a notice of appearance in that contested case. An attorney's electronic signature to a petition for a contested case filed electronically shall be that attorney's notice of appearance in that contested case.

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

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

(g) Documents filed in a contested case by an e-OAH user shall be filed electronically by means of the Electronic Filing Service ~~Provider and~~ Provider, shall be served electronically by means of the Electronic Filing Service Provider on all other attorneys or other parties registered in e-OAH in that contested ~~case~~ case, and shall include a certificate of service.

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

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

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

- (1) forwarded by first class mail or overnight express mail contemporaneously with the electronic filing;
- (2) paid personally to the chief hearings clerk of the Office of Administrative Hearings within five business days of the filing; or
- (3) paid by electronic funds transfer.

(k) If e-OAH is subject to technical failure that prevents the Office of Administrative Hearings from receiving filings in e-OAH in accordance with the Rules in this Section, either continuously or intermittently over the course of any period of time that, after 12:00 noon on such day, amounts to more than one hour, filings due that day that were not filed due to technical failure shall become due the next business day. Such delayed filings shall be deemed timely filed if accompanied by a certification attesting to the e-OAH user's failed attempts to file electronically at least two times after 12:00 noon separated by more than one hour on each day that e-OAH is subject to technical failure. If a document must be filed to meet a statutory deadline on a date that e-OAH is subject to technical failure, the e-OAH user shall file that document with the Office of Administrative Hearings pursuant to Rule .0101(b) or Rule .0102(a)(2)(A) of this Chapter and shall serve that document pursuant to Rule .0102(a)(3) of this Chapter.

*History Note: Authority G.S. 7A-750; 150B-23; 150B-23.2; 150B-23.3;  
Eff. March 1, 2016;  
Amended Eff. April 1, 2017; October 1, 2016.*