

1 26 NCAC 03 .0120 is amended with changes as published in 31:12 NCR 1251 as follows:

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3 **26 NCAC 03 .0120 RIGHTS AND RESPONSIBILITIES OF PARTIES**

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

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

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

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

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

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

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

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

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29 *History Note: Authority G.S. 7A-751(a); 150B-25; 150B-33; 150B-34;*
30 *Eff. August 1, 1986;*
31 *Amended Eff. October 1, 1991; April 1, 1990; November 1, 1987;*
32 *Recodified from Rule .0119 Eff. August 1, 2000;*
33 *Amended Eff. May 1, 2009; April 1, 2001;*
34 *Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Augustus B. Elkins, II declared Rule 26*
35 *NCAC 03 .0120(d) void as applied in Abundant Life Child Care Center, Tiffany D. Monroe v.*
36 *Division of Child Development, June Locklear, Brenda Faircloth (08 DHR 2954);*
37 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,*
38 *2016;*
39 *Amended Eff. April 1, 2017.*
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1 26 NCAC 03 .0502 is amended with changes as published in 31:12 NCR 1251 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 users
7 shall keep current their electronic mail address in e-OAH. When all attorneys and unrepresented parties to a contested
8 case are registered in e-OAH, all documents filed and served in that contested case shall be filed and served
9 electronically by means of the Electronic Filing Service Provider.

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

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

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

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

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

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

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

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

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

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

38 (k) If e-OAH ~~is subject to~~experiences technical failure that prevents the Office of Administrative Hearings from
39 receiving filings in e-OAH in accordance with the Rules in this Section, either continuously or intermittently over the
40 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
41 were not filed due to technical failure shall become due the next business day. Such delayed filings shall be deemed
42 timely filed if accompanied by a certification attesting to the e-OAH user’s failed attempts to file electronically at least
43 two times after 12:00 noon separated by more than one hour on each day that e-OAH ~~is subject to~~experiences technical
44 failure. If a document must be filed to meet a statutory deadline on a date that e-OAH ~~is subject to~~experiences
45 technical failure, the e-OAH user shall file that document with the Office of Administrative Hearings pursuant to Rule
46 .0101(b) or Rule .0102(a)(2)(A) of this Chapter and shall serve that document pursuant to Rule .0102(a)(3) of this
47 Chapter.

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