

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend the rules cited as 26 NCAC 03 .0103, .0112 and .0123.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.oah.nc.gov/>

Proposed Effective Date: April 1, 2023

Public Hearing:

Date: January 5, 2023

Time: 9:00 a.m.

Location: Commission Room, Office of Administrative Hearings, 1711 New Hope Church Rd., Raleigh, NC 27609

Reason for Proposed Action: *The Office of Administrative Hearings is proposing amendments to three rules to delete unnecessary provisions, modernize the rules, and provide clarifying language where necessary. The proposed amendments also clean-up existing language in accordance with the Administrative Rules Style Guide.*

Comments may be submitted to: Ashley Snyder, 1711 New Hope Church Rd., Raleigh, NC 27609; email ashley.snyder@oah.nc.gov

Comment period ends: February 13, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 03 - HEARINGS DIVISION

SECTION .0100 - HEARING PROCEDURES

26 NCAC 03 .0103 COMMENCEMENT OF CONTESTED CASE: NOTICE AND FILING FEE

~~(a)~~ A contested case in the Office of Administrative Hearings is commenced by the filing of a petition as required by G.S. 150B-23 and payment of the appropriate filing fee (if a fee is required by G.S. 150B-23.2).

~~(b)~~(a) Within five days of filing a petition to commence a contested case, the Chief Administrative Law Judge shall assign an administrative law judge to the case. Within ten days of the filing of a petition commencing a contested case, the ~~chief hearings clerk~~ Chief Hearings Clerk of the Office of Administrative Hearings shall serve a Notice of Contested Case Filing and Assignment upon all who are parties to the dispute. The notice shall contain the following:

- (1) ~~Name~~ name of case and date of filing;
- (2) ~~Name, name,~~ address, and telephone number of the assigned administrative law judge; and
- (3) A a request that the party send within 30 days a copy of the document constituting the agency action that caused the filing of the ~~petition; petition or a written explanation of why the petitioner is a party or person aggrieved if a document constituting the agency action does not exist.~~

~~(e)~~(b) In contested cases commenced by a person aggrieved involving the following causes of action, the petitioner shall pay a filing fee of one hundred twenty-five dollars (\$125.00):

- (1) ~~Contested~~ contested cases challenging certificate of need filed pursuant to G.S. 131E-188;
- (2) ~~Contested~~ contested cases challenging permit actions under G.S. 143-215.1, G.S. 143-215.10C, G.S. 143-215.15, and G.S. 143-215.108; and
- (3) ~~Contested~~ contested cases where the amount in controversy is fifty thousand dollars (\$50,000) or greater.

~~(d)~~(c) In contested cases commenced by a person aggrieved that do not involve the causes of action listed in Paragraph ~~(e)~~(b) of this Rule, the petitioner shall pay a fee of twenty dollars (\$20.00).

~~(e)~~ The filing fee shall be waived in a contested case in which the petition is filed in forma pauperis and supported by such proofs as are required in G.S. 1-110. A petitioner seeking to have the filing fee waived under this Paragraph shall file the appropriate OAH form with the chief hearings clerk simultaneously when filing the petition for a contested case.

~~(d)~~ The filing fee shall be waived in a contested case involving a mandated federal cause of ~~action.~~ action such as Medicaid or the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

~~(e)~~ When filing a petition for a contested case, the petitioner shall simultaneously submit the filing fee or a request to proceed in forma pauperis.

(1) If the filing fee is not ~~paid,~~ paid or is paid in an incorrect ~~amount,~~ amount at the time of filing, the Office of Administrative Hearings shall notify the petitioner in writing and permit a late payment of the filing fee to be made within 60 days of the date the petition was filed. If the filing fee is not paid ~~and good cause is not shown by the petitioner~~ within the 60 days of the date of filing, the petition ~~shall be dismissed by the Administrative Law Judge.~~ may be dismissed pursuant to G.S. 150B-33(b)(10).

(2) To proceed in forma pauperis, a petitioner shall submit an affidavit on a form provided by OAH containing the substantive requirements listed in G.S. 1-110(a). Late forms shall be accepted within the timeframe set in Subparagraph (e)(1) of this Rule.

(h) The filing fee shall be ~~reimbursed~~ refunded when ~~applicable in accordance with Rule .0105(7) of this Section.~~ Section applies.

(i) The method of payment of the filing fee shall be:

- (1) cash;
- (2) money order;
- (3) certified check;
- (4) check drawn on an attorney's trust or operating ~~account.~~ account; or
- (5) credit or debit card if the petition is filed electronically.

History Note: Authority G.S. 150B-23; 150B-23.2; 150B-33.

26 NCAC 03 .0112 DISCOVERY

~~(a)~~ Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening or complicating the hearings process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties are obliged to exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.

~~(b)~~ (a) Any means of discovery available pursuant to the North Carolina Rules of Civil Procedure, G.S. 1A-1, is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the administrative law judge to obtain an order compelling discovery. In the disposition of the motion, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues in controversy are significant enough to warrant the discovery. ~~In ruling on a motion for discovery, the administrative law judge shall recognize all privileges recognized at law.~~

~~(c)~~ (b) When a party serves another party with a Request for Discovery, that request need not be filed with the Office of Administrative Hearings but shall be served upon all parties.

~~(d)~~ (c) The parties in any contested case shall ~~immediately commence to exchange information voluntarily, to voluntarily exchange information upon filing the contested case,~~ seek access as provided by law to public ~~documents~~ documents, and ~~to exhaust other informal means of obtaining discoverable material.~~

~~(e)~~ All discovery shall be completed no later than the first day of the contested case hearing. ~~An administrative law judge may shorten or lengthen the period for discovery and adjust hearing dates accordingly and, when necessary, allow discovery during the pendency of the contested case hearing.~~

~~(f)~~ (d) No later than 15 days from receipt of a notice requesting discovery, the receiving party shall:

- (1) move for relief from the request;
- (2) provide the requested information, material or access; or
- (3) offer a schedule for reasonable compliance with the request.

~~(g)~~ (e) Sanctions for failure of a party to comply with an order of the administrative law judge made pursuant to the discovery rules of this Chapter shall be as provided for by G.S. 1A-1, Rule 37, to the extent that an administrative law judge may impose such sanctions, and Rule .0114 of this Section.

History Note: Authority G.S. 1A-1, Rule 5; 150B-28; 150B-33(b)(3)(4).

26 NCAC 03 .0123 OFFICIAL RECORD

(a) The official record of a contested case shall be available for public inspection upon request. An administrative law judge may, consistent with law, order all or part of an official record sealed.

(b) The official record shall be prepared in accordance with G.S. 150B-37(a).

(c) Contested case hearings shall be recorded either by a hearing assistant provided by the Office of Administrative Hearings or a court reporter listed by the North Carolina Administrative Office of the Courts as authorized and approved to prepare transcripts of proceedings held in the courts of all counties procured directly by one or more parties to the contested case.

(d) If a contested case hearing is cancelled, the party responsible for the cancellation shall provide a 24-hour cancellation notice to the other parties in all cases in which a hearing assistant is provided by the Office of Administrative Hearings.

(e) Transcripts of proceedings held in the Office of Administrative Hearings shall be made only upon request of a party. When proceedings are recorded by a court reporter, transcript requests shall be made directly to the court reporter. When proceedings are recorded by a hearing assistant, transcript requests shall be made directly to a transcriptionist listed by the North Carolina Administrative Office of the Courts as authorized and approved to prepare transcripts of proceedings held in the courts of all counties.

(f) A party who orders a transcript shall use an Office of Administrative Hearings ~~Transcript Contract~~ transcript form to order the transcript, which shall include the following information:

- (1) case name and number;
- (2) requestor information; and
- (3) transcriptionist information.

That form is available on the Office of Administrative Hearings website at <https://www.oah.nc.gov> and may be obtained from the Chief Hearings Clerk upon request. The party ordering the transcript shall file the transcript ~~contract~~ form with the Office of Administrative Hearings and shall serve the transcript ~~contract~~ form on all other parties and the transcriptionist.

(g) The transcriptionist shall deliver the transcript to the ~~parties~~ party or parties that requested the transcript and file the transcript with the Office of Administrative Hearings by email to oah.clerks@oah.nc.gov in PDF format no later than 30 days after having been served with the transcript contract.

(g) Copies of recordings made by a hearing assistant are available upon written request at a cost set out in 26 NCAC 01 .0103.

History Note: Authority G.S. 7A-751; 150B-37.