

Burgos, Alexander N

Subject: FW: [External] Rule 26 NCAC 03 .0103
Attachments: 26 NCAC 03 .0103 with changes.docx

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Wednesday, March 8, 2023 11:18 AM
To: ROBERT & MONICA BRYAN <bobbymonica@bellsouth.net>
Cc: Andrew Atkins <aatkins@smithlaw.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Rule 26 NCAC 03 .0103

Hi Bobby,

Thank you for the feedback. I agree it reads better. I've updated in the attached and will file the updated version for RRC review at the upcoming meeting.

Ashley Snyder
Codifier of Rules
Office of Administrative Hearings
(984) 236-1941

From: ROBERT & MONICA BRYAN <bobbymonica@bellsouth.net>
Sent: Tuesday, March 7, 2023 3:54 PM
To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Cc: Andrew Atkins <aatkins@smithlaw.com>
Subject: [External] Rule 26 NCAC 03 .0103

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Ashley,

I have a suggestion that I think may make the referenced rule read a little better. In the added sentence, I would argue that "include" and "for example" back to back is redundant since since the word "include" implies a non-exclusive list. Perhaps a better way of beginning the sentence would be: "Examples of federal causes of action include cases involving ..." While I would argue that "Examples of" is unnecessary, I guess someone could argue that it makes it absolutely clear that the list is not meant to be exclusive. This just reads a little better to me.

This is not a big deal to me, butt I do think it improves the reading. I'll be happy whatever you decide.

Bobby

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Burgos, Alexander N

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Ashley,

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Burgos, Alexander N

Subject: FW: [External] RE: OAH Rule Filing - Volunteer Needed

From: Andrew Atkins <aatkins@smithlaw.com>
Sent: Tuesday, February 28, 2023 4:38 PM
To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: OAH Rule Filing - Volunteer Needed

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Thank you. These changes all look good. I'll be prepared to recommend approval.

Best,
Andrew

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From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Tuesday, February 28, 2023 4:23 PM
To: Andrew Atkins <aatkins@smithlaw.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: OAH Rule Filing - Volunteer Needed

Commissioner Atkins,

Thank you for your feedback. I've attached responses to your questions along with updated versions of both rules.

Ashley Snyder
Codifier of Rules
Office of Administrative Hearings
(984) 236-1941

Burgos, Alexander N

Subject: FW: [External] RE: OAH Rule Filing - Volunteer Needed
Attachments: Request for Technical Change - February 2023 10948446_1.docx; 26 NCAC 03 .0103 with changes.docx; 26 NCAC 03 .0112 with changes.docx

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Tuesday, February 28, 2023 4:23 PM
To: Andrew Atkins <aatkins@smithlaw.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: OAH Rule Filing - Volunteer Needed

Commissioner Atkins,

Thank you for your feedback. I've attached responses to your questions along with updated versions of both rules.

Ashley Snyder
Codifier of Rules
Office of Administrative Hearings
(984) 236-1941

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of Administrative Hearings

RULE CITATION: 26 NCAC 03 .0103, .0112, .0123

These Rules submitted by the OAH were reviewed by Commissioner Andrew Atkins

26 NCAC 03 .0103

(d) Are there other federal causes of action in addition to Medicaid or the Special Supplemental Nutrition Program for Women, Infants, and Children? If so, is it possible to complete the list?

Agency response:

OAH does not intend to use this rule to create an exhaustive list. We added the most common types of filings to the list to provide additional clarification to the public. Some types of cases involving a federal cause of action are rare and we may come across one every few years. It is possible there are federal causes of action that would come to OAH we have not seen yet. The intent is not for the list to be limiting.

26 NCAC 03 .0112

(c) I would consider putting in a timeframe for the initial voluntary exchange of information even if it is qualified in some way to allow for extended time periods by agreement or otherwise. This could also be accomplished by referring to (d).

Agency response:

The timeline is set in the scheduling order. Rule text updated.

1 26 NCAC 03 .0103 is amended with changes as published in 37:12 NCR 904-906 as follows:

2
3 **26 NCAC 03 .0103 COMMENCEMENT OF CONTESTED CASE: NOTICE AND FILING FEE**

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

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

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

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

- 17 (1) ~~Contested~~ contested cases challenging certificate of need filed pursuant to G.S. 131E-188;
18 (2) ~~Contested~~ contested cases challenging permit actions under G.S. 143-215.1, G.S. 143-215.10C, G.S.
19 143-215.15, and G.S. 143-215.108; and
20 (3) ~~Contested~~ contested cases where the amount in controversy is fifty thousand dollars (\$50,000) or
21 greater.

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

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

28 ~~(f)-(d)~~ The filing fee shall be waived in a contested case involving a mandated federal cause of action. [action such
29 as Medicaid or the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).] Federal causes
30 of action include, for example, cases involving Medicaid, foster care, the Special Supplemental Nutrition Program for
31 Women, Infants and Children (WIC), Special Education/IDEA, the Health Care Personnel Registry, and the
32 Supplemental Nutrition Assistance Program (SNAP).

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

- 35 (1) If the filing fee is not ~~paid, paid~~ or is paid in an incorrect ~~amount, amount~~ at the time of filing, the
36 Office of Administrative Hearings shall notify the petitioner in writing and permit a late payment of
37 the filing fee to be made within 60 days of the date the petition was filed. If the filing fee is not paid

1 ~~and good cause is not shown by the petitioner~~ within the 60 days of the date of filing, the petition
2 ~~shall be dismissed by the Administrative Law Judge.~~ may be dismissed pursuant to G.S. 150B-
3 33(b)(10).

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

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

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

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

15
16 *History Note: Authority G.S. 150B-23; 150B-23.2; 150B-33;*
17 *Eff. August 1, 1986;*
18 *Amended Eff. October 1, 1991; November 1, 1987; September 1, 1986;*
19 *Emergency Amendment Eff. October 1, 2009;*
20 *Temporary Amendment Eff. December 1, 2009;*
21 *Amended Eff. June 1, 2014; October 1, 2010;*
22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,*
23 *2016;*
24 *Amended Eff. April 1, 2023.*

1 26 NCAC 03 .0112 is amended with changes as published in 37:12 NCR 904-906 as follows:

2
3 **26 NCAC 03 .0112 DISCOVERY**

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

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

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

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

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

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

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

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

31
32 *History Note: Authority G.S. 1A-1, Rule 5; 150B-28; 150B-33(b)(3)(4);*

33 *Eff. August 1, 1986;*

34 *Amended Eff. February 1, 1994; November 1, 1987;*

35 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,*
36 *2016;*

37 *Amended Eff. April 1, 2023.*

Burgos, Alexander N

Subject: FW: [External] RE: OAH Rule Filing - Volunteer Needed

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Sent: Tuesday, February 28, 2023 11:42 AM

To: Andrew Atkins <aatkins@smithlaw.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RE: OAH Rule Filing - Volunteer Needed

Thank you, Commissioner Atkins. I will review and get back to you.

Ashley Snyder

Codifier of Rules

Office of Administrative Hearings

(984) 236-1941

Burgos, Alexander N

From: Andrew Atkins <aatkins@smithlaw.com>
Sent: Tuesday, February 28, 2023 11:17 AM
To: Burgos, Alexander N; Snyder, Ashley B
Subject: RE: [External] RE: OAH Rule Filing - Volunteer Needed
Attachments: Request for Technical Change - February 2023 10948446_1.DOCX

Follow Up Flag: Follow up
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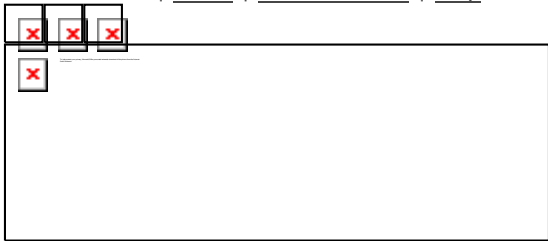
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Alex and Ashley,

Please find attached two minor requests. Let me know if you have any questions or concerns.

Best,
Andrew

ANDREW P. ATKINS | PARTNER
aatkins@smithlaw.com | [bio](#)
919.821.6715 | [vcard](#) | smithlaw.com | [map](#)



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From: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Sent: Monday, February 27, 2023 10:03 AM
To: Andrew Atkins <aatkins@smithlaw.com>
Subject: RE: [External] RE: OAH Rule Filing - Volunteer Needed

Good morning,

Andrew, here are the documents. I attached an old TCR from the last time RRC reviewed so you get an idea of how it was done previously.

Thanks again!

Alexander Burgos
Paralegal
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1940

Alexander.burgos@oah.nc.gov

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Monday, February 27, 2023 9:46 AM
To: Andrew Atkins <aatkins@smithlaw.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: OAH Rule Filing - Volunteer Needed

Thank you, Commissioner Atkins! Alex will send you the materials.

Ashley Snyder
Codifier of Rules
Office of Administrative Hearings
(984) 236-1941

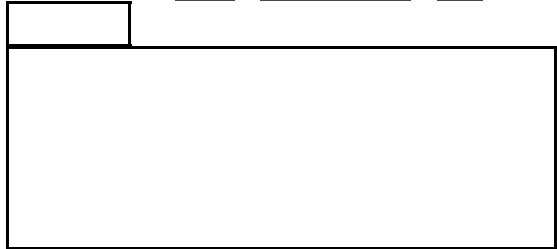
From: Andrew Atkins <aatkins@smithlaw.com>
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I can do it.

Andrew

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Three-Time Best Places to Work Winner! Triangle Business Journal

From: rrc.commissioners-bounces@lists.ncmail.net <rrc.commissioners-bounces@lists.ncmail.net> **On Behalf Of** Snyder, Ashley B
Sent: Monday, February 27, 2023 9:42 AM
To: OAH.RRC.Commissioners <RRC.Commissioners@lists.ncmail.net>
Subject: Re: [RRC.Commissioners] OAH Rule Filing - Volunteer Needed

Good morning, Commissioners,

We still need a volunteer to review and present OAH's filing for the March meeting. It's only three rules. Please let me know if you're willing to review.

Thanks,

Ashley Snyder

Codifier of Rules

Office of Administrative Hearings

(984) 236-1941

From: Snyder, Ashley B

Sent: Tuesday, February 21, 2023 10:55 AM

To: OAH.RRC.Commissioners <RRC.Commissioners@lists.ncmail.net>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: OAH Rule Filing - Volunteer Needed

Good morning, Commissioners,

The Office of Administrative Hearings filed three rule amendments for review at the March RRC meeting. It has been our practice to have a commissioner review and present any OAH rule filings at the meeting to avoid any conflict or potential conflict since the staff attorneys are OAH employees. Alex will help you through the process by providing necessary documents and getting everything posted to our online agenda. Would anyone be willing to volunteer?

Thanks in advance!

Ashley Snyder

Codifier of Rules

Office of Administrative Hearings

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