

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 .0101, and .0102.

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

Proposed Effective Date: *May 1, 2025*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Please email Lisa Garner (lisa.garner@oah.nc.gov) to demand a public hearing.*

Reason for Proposed Action: *26 NCAC 03 .0101 is being amended to delete a provision that is no longer required.*

26 NCAC 03 .0102 is being amended to add a definition. The change further ensures the specified agency can be served as required by G.S. 150B-23(a).

Comments may be submitted to: *Lisa Garner, 1711 New Hope Church Road, Raleigh, NC 27609; email lisa.garner@oah.nc.gov*

Comment period ends: *March 17, 2025*

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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or 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 .0101 GENERAL

(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.

(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. Faxed documents shall be sent to: (984) 236-1871. Electronic mail with attached file shall be sent by electronic transmission to: oah.clerks@oah.nc.gov. ~~The faxed documents or electronic mail with attached file shall be deemed a "filing" within the meaning of 26 NCAC 03 .0102(a)(2) provided the original signed filing and the appropriate filing fee (if a fee is required by G.S. 150B-23.2) are received by OAH within seven business days following the transmission of the faxed documents or electronic mail with attached file.~~ Electronic mail without an attached file as specified in this Paragraph shall not constitute a valid filing with the Office of Administrative Hearings.

(c) Every pleading and other documents filed with OAH shall be signed by the attorney, mediator, or other party who prepared the document, and shall contain 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.

(d) 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;

Emergency Amendment Eff. October 1, 2009;
Temporary Amendment Eff. December 1, 2009;
Amended Eff. October 1, 2010;
Temporary Amendment Eff. January 1, 2012;
Amended Eff. March 1, 2016; November 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. October 1, 2022.

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" 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, 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, the judge shall note thereon the filing date. All documents filed with the Office of Administrative Hearings, except exhibits, shall be in letter size 8 1/2" by 11"; or
 - (B) electronic filing as defined in 26 NCAC 03 .0501(1).
 - (3) "Service" or "Serve" 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;
 - (E) delivery by overnight express mail service; or
 - (F) electronic service as defined in 26 NCAC 03 .0501(4).
 - (4) "Document Constituting Agency Action" means the written notice described in G.S. 150B-23(f). When describing the "procedure" for filing a contested case, the agency shall include the name of the agency, and its authorized process agent to ensure the specified agency can be served as required by G.S. 150B-23(a).
- (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 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 by the recipient are not deemed served. Within five business days of receipt of an unreadable document, the receiving party shall notify the sending party of the unreadability of the document.
- 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 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;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.