

CHAPTER 1 - DEPARTMENTAL RULES

SECTION .0100 - GENERAL PROVISIONS

11 NCAC 01 .0101 NAME AND PURPOSE **11 NCAC 01 .0102 DEFINITIONS**

History Note: *Authority G.S. 58-2; 58-4;*
 Eff. February 1, 1976;
 Readopted Eff. May 12, 1978;
 Repealed Eff. July 1, 1988.

11 NCAC 01 .0103 LOCATION AND MAILING ADDRESS

- (a) The primary location of the North Carolina Department of Insurance is 3200 Beechleaf Court, Raleigh, North Carolina. The Piedmont Regional Office is located at 106 Baker Road, Archdale, North Carolina. The Whiteville Regional Office is located at 2 Whiteville Plaza, Whiteville, North Carolina. The Gastonia Regional Office is located at 1422 Burtonwood Drive, Suite 101, Gastonia, North Carolina.
- (b) The mailing address for the North Carolina Department of Insurance is 1201 Mail Service Center, Raleigh, NC 27699-1201. The mailing address for the Piedmont Regional Office is 106 Baker Road, Archdale, NC 27263. The mailing address for the Whiteville Regional Office is 2 Whiteville Plaza, Whiteville, NC 27842. The mailing address for the Gastonia Regional Office is 1422 Burtonwood Drive, Gastonia, NC 28054.
- (c) The Department's normal working hours shall be between 8:00 a.m. and 5:00 p.m., Monday through Friday, except for State recognized holidays as set forth in 25 NCAC 01E .0901.

History Note: *Authority G.S. 58-2-1; 58-2-40;*
 Eff. February 1, 1976;
 Readopted Eff. May 12, 1978;
 Amended Eff. January 1, 2018; November 1, 2005; July 1, 1992; September 1, 1988;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;
 Amended Eff. February 1, 2024.

11 NCAC 01 .0104 OFFICE HOURS **11 NCAC 01 .0105 COMMISSIONER OF INSURANCE**

History Note: *Authority G.S. 58-4; 58-5; 58-9*
 Eff. February 1, 1976;
 Readopted Eff. May 12, 1978;
 Repealed Eff. August 1, 1988.

11 NCAC 01 .0106 ORGANIZATION OF THE DEPARTMENT

History Note: *Authority G.S. 58-2-25; 58-2-40;*
 Eff. February 1, 1976;
 Readopted Eff. May 12, 1978;
 Amended Eff. August 1, 1988; June 1, 1985;
 Repealed Eff. August 3, 1992.

11 NCAC 01 .0107 PUBLIC INFORMATION AND DEPARTMENTAL RECORDS

Departmental records that are properly deemed to be public information may be reproduced upon request. The request must be made in writing and directed to the head of the appropriate division. Reproduction of departmental records will be permitted on a discretionary basis depending on the volume of the request and the availability of personnel to make the reproductions. Fees will be charged in accordance with the applicable General Statutes of North Carolina.

History Note: *Authority G.S. 58-2-1; 58-2-40;*

Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. August 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0108 DEFINITIONS AND RULES OF CONSTRUCTION FOR THIS TITLE

- (a) The definitions contained in G.S. 58-1-5 are incorporated in this Title by reference.
- (b) The rules of construction contained in G.S. 12-3 apply in the construction of this Title.

History Note: Authority G.S. 58-2-40(1);
Eff. January 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

SECTION .0200 - DEPARTMENTAL RULES

11 NCAC 01 .0201 LOCATION OF AND INSPECTION OF DEPARTMENTAL RULES

- (a) Location of Departmental Rules. All rules for the Department and all codes, standards and rules adopted by reference are located in the Hearings Office of the Department of Insurance.
- (b) Inspection of Rules. Any person desiring to inspect the rules of the Department shall so notify the Deputy Commissioner of the North Carolina Department of Insurance in charge of the Hearings Office.

History Note: Authority G.S. 58-2-40; 150B-21;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. December 1, 1994; July 1, 1992; June 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0202 FORMER DEPARTMENTAL REGULATIONS RETAINED/CITED

History Note: Authority G.S. 58-9;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Repealed Eff. July 1, 1988.

11 NCAC 01 .0203 PETITION FOR ADOPTION: AMENDMENT OR REPEAL OF RULES

History Note: Authority G.S. 58-2-40; 150B-12;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. August 1, 1988; June 1, 1985;
Repealed Eff. July 1, 1992.

11 NCAC 01 .0204 NOTICE OF RULE-MAKING HEARINGS

Notice of rule-making hearings will be given in accordance with the provisions of Part 2 of Article 2A of General Statute Chapter 150B.

History Note: Authority G.S. 150B-21.1; 150B-21.2; 150B-21.4; 150B-21.5;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. July 1, 1992; August 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0205 RULE-MAKING HEARINGS: GENERAL INFORMATION

The hearing officer shall have complete control of the proceedings, including extensions of any time requirements, order of presentations, time allotments for presentations, direction of the flow of the discussion and the management of the hearing. Each person participating in the hearing shall be given a fair opportunity to present views, data and comments.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0206 ORAL/WRITTEN PRESENTATIONS AT RULE-MAKING HEARINGS
11 NCAC 01 .0207 REQUEST FOR NOTICE OF RULE-MAKING HEARINGS
11 NCAC 01 .0208 EMERGENCY RULES

History Note: Authority G.S. 150B-12; 150B-13;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. June 1, 1985;
Repealed Eff. July 1, 1988.

11 NCAC 01 .0209 INSTRUCTIONS FOR FILING A PETITION FOR RULE-MAKING

(a) Any person may petition the Department to adopt a new rule, or amend or repeal an existing rule by submitting a rulemaking petition to the Department. The petition must be titled "Petition for Rulemaking", must be in writing, must be signed by the person submitting the petition, and must include the following information:

- (1) the name and address of the person submitting the petition;
- (2) a citation to any rule for which an amendment or repeal is requested;
- (3) a draft of any proposed rule or amended rule;
- (4) an explanation of why the new rule or amendment or repeal of an existing rule is requested and the reason for the request;
- (5) the effect of the new rule, amendment, or repeal on existing rules or orders, or both, and on the procedures of the Department;
- (6) any other information the person submitting the petition considers relevant.

(b) The Commissioner must decide whether to grant or deny a petition for rulemaking within 30 days of receiving the petition. In making his decision, the Commissioner will consider the information submitted with the petition and any other relevant information.

(c) When the Commissioner denies a petition for rulemaking, he must send written notice of the denial to the person who submitted the request. The notice must state the reason for the denial. When the Commissioner grants a rulemaking petition, he must initiate rulemaking proceedings and send written notice of the proceedings to the person who submitted the request.

History Note: Authority G.S. 58-2-40(1); 150B-20;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

SECTION .0300 - DECLARATORY RULINGS

11 NCAC 01 .0301 DECLARATORY RULINGS: GENERAL INFORMATION

(a) Declaratory rulings pursuant to G.S. 150B-4 shall be issued by the Department only:

- (1) as to the validity of a rule adopted by the Department; or
- (2) as to the applicability to a given state of facts of:
 - (A) a statute administered by the Department,
 - (B) a rule adopted by the Department, or
 - (C) an order issued by the Department.

(b) A declaratory ruling shall not be issued on a matter requiring an evidentiary proceeding.

History Note: Authority G.S. 58-2-40(1); 150B-4;
Eff. February 1, 1976;

Readopted Eff. May 12, 1978;

Amended Eff. March 1, 2011; July 1, 1992; August 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0302 PETITION FOR DECLARATORY RULING

(a) Petitioner Must Possess Interest. The petitioner must possess such an interest in the question to be ruled on that the petitioner's need to have such a ruling in order to comply with statutory requirements, departmental rules, or departmental policy shall be apparent from the petition and shall be fully explained therein.

(b) Form and Content of Petition. The petition shall be typewritten and shall contain the name and address of the petitioner, the specific factual situation involved, the question or questions sought to be answered, and the identification of the rules, statutes, or orders applicable to the question presented.

(c) Written Brief May Be Submitted. The petitioner may submit a written brief, but oral argument shall not be allowed unless deemed necessary by the commissioner.

(d) Mailing Address. All requests for declaratory rulings shall be mailed to: Commissioner of Insurance, P.O. Box 26387, Raleigh, North Carolina 27611.

History Note: Authority G.S. 58-2-40(1); 150B-4;

Eff. February 1, 1976;

Readopted Eff. May 12, 1978;

Amended Eff. August 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0303 RESPONSE OF COMMISSIONER TO PETITION

(a) Written Response. A written response to the petition for a declaratory ruling, whether in the form of a declaratory ruling or a refusal to issue a declaratory ruling, shall be signed by the commissioner or his designated representative within 60 days following the date on which the petition was received by the department.

(b) Refusal to Issue Declaratory Ruling. The commissioner may refuse to issue a declaratory ruling if one of the following circumstances exists:

- (1) The subject matter is one in which the commissioner has no authority to issue a binding decision;
- (2) The situation is one in which the amount of work that would be required by the commissioner and his staff to issue the declaratory ruling would be the same as or greater than the work required to process the request through normal departmental procedures or a contested case proceeding;
- (3) The petition does not state with enough specificity the factual situation involved, or the question is presented in such a manner that the commissioner cannot determine what the question is, or that the commissioner cannot respond with a specific ruling that will be binding on all parties;
- (4) The petitioner does not, in the opinion of the commissioner, possess sufficient interest in the question to be ruled on; or
- (5) For any other reason the commissioner finds the issuance of a declaratory ruling to be undesirable.

History Note: Authority G.S. 58-2-40(1); 150B-4;

Eff. February 1, 1976;

Readopted Eff. May 12, 1978;

Amended Eff. August 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

SECTION .0400 - ADMINISTRATIVE HEARINGS

11 NCAC 01 .0401 RIGHT TO HEARING

Whenever the Department acts in such a way as to affect the rights, duties or privileges of a specific identified party, the party may appeal for a final decision by the Department in accordance with this Section and Article 3A of G.S. 150B.

History Note: Authority G.S. 58-2-40; 150B-38;

Eff. February 1, 1976;

Readopted Eff. May 12, 1978;

Amended Eff. July 1, 1992; August 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0402 INFORMAL SETTLEMENT

*History Note: Authority G.S. 58-2-40;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Repealed Eff. August 3, 1992.*

11 NCAC 01 .0403 REQUEST FOR HEARING

(a) A request for an administrative hearing under 11 NCAC 01 .0401 must be in writing and shall contain the following information:

- (1) name and address of the person requesting the hearing,
- (2) a statement of the departmental action being challenged,
- (3) a statement of the manner in which the petitioner is aggrieved, and
- (4) a specific demand for a public hearing.

(b) The request for hearing shall be filed with: General Counsel, N.C. Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201.

*History Note: Authority G.S. 58-2-40; 150B-38;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. August 1, 2004; December 1, 1994; July 1, 1992; October 1, 1988; June 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

11 NCAC 01 .0404 GRANTING OR DENYING HEARING REQUESTS

*History Note: Authority G.S. 158-9;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Repealed Eff. September 1, 1988.*

11 NCAC 01 .0405 NOTICE OF HEARING

*History Note: Authority G.S. 58-2-50; 150B-23;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Repealed Eff. July 1, 1992.*

11 NCAC 01 .0406 FAILURE TO APPEAR AT HEARING

*History Note: Authority G.S. 150B-39;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Repealed Eff. September 1, 1988.*

11 NCAC 01 .0407 INTERVENTION IN AN ADMINISTRATIVE HEARING

11 NCAC 01.0408	DEPOSITIONS
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11 NCAC 01.0409

11 NCAC 01 .0410

11 NCAC 01 .0411

*History Note: Authority G.S. 1A-1; 150B-28; 150B-38; 150B-39; 150B-40;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978:*

*Amended Eff. August 1, 1988; June 1, 1985;
Repealed Eff. July 1, 1992.*

11 NCAC 01 .0412 APPEALS TO THE COMMISSIONER

*History Note: Authority G.S. 58-155.49, -155.83, -173.11, -173.23, -248.39;
 Eff. May 12, 1978;
 Repealed Eff. August 1, 1988.*

11 NCAC 01 .0413 DEFINITIONS

The definitions contained in G.S. 150B-2 are incorporated in this Section by reference. In addition to those definitions, the following definitions apply to this Section:

- (1) "File or filing" means to place or the placing of the paper or item to be filed into the care and custody of the hearing officer, and acceptance thereof by him. All documents filed with the hearing officer, except exhibits, shall be in duplicate in letter size 8 1/2" by 11".
- (2) "Hearing officer" means the Commissioner, a member of the Commissioner's staff appointed by the Commissioner under G.S. 58-2-55, or an administrative law judge assigned under G.S. 58-2-55.
- (3) "Party" means the Department, the licensee, or an intervenor who qualifies under 11 NCAC 1 .0425.
- (4) "Service or serve" means personal delivery or, unless otherwise provided by law or rule, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the person to be served at his or her last known address. A certificate of service by the person making the service shall be appended to every document requiring service under this Section. Service by mail or licensed overnight express 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; or postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

*History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
 Eff. July 1, 1992;
 Amended Eff. April 1, 1995;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

11 NCAC 01 .0414 GENERAL PROVISIONS

Governed by the principles of fairness, uniformity, and punctuality, the following general provisions apply to this Section:

- (1) 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 apply in contested cases before the Commissioner unless another specific statute or rule provides otherwise.
- (2) The Department may supply, at the cost for copies specified in G.S. 58-6-5(3), forms for use in contested cases.
- (3) Every document filed with the hearing officer shall be signed by the author of the document, and shall contain his name, address, telephone number, and North Carolina State Bar number if the author is an attorney. An original and one copy of each document shall be filed.
- (4) Except as otherwise provided by statute, the rules contained in this Section govern the conduct of contested case hearings under Chapter 58 of the General Statutes.
- (5) The content and the manner of service of the notice of hearing shall be as specified in G.S. 150B-38(b) and (c) and in 11 NCAC 1 .0413(4).
- (6) Venue in a contested case shall be determined in accordance with G.S. 150B-38(e).
- (7) Hearings shall be conducted, as nearly as practical, in accordance with the practice in the Trial Division of the General Court of Justice.
- (8) Ex parte communications in a contested case are governed by G.S. 150B-40(d).
- (9) This Section and copies of all matter adopted by reference in this Section are available from the Department at the cost established in G.S. 58-6-5(3).
- (10) The rules of statutory construction contained in Chapter 12 of the General Statutes apply in the construction of this Section.

- (11) Unless otherwise provided in a specific statute, time computations in contested cases under this Section are governed by G.S. 1A-1, Rule 6.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0415 ORDER FOR PREHEARING STATEMENTS

The hearing officer may serve all parties with an order for prehearing statements together with, or after service of, the notice of hearing. Every party thus served shall, within 30 days after service, file the requested statements setting out the party's present position on the following:

- (1) The nature of the proceeding and the issues to be resolved;
- (2) A brief statement of the facts and reasons supporting the party's position on each matter in dispute;
- (3) A list of proposed witnesses with a brief description of his or her proposed testimony;
- (4) A description of what discovery, if any, the party will seek to conduct prior to the contested case hearing and an estimate of the time needed to complete discovery;
- (5) Venue considerations;
- (6) Estimation of length of the hearing;
- (7) The name, address, and telephone number of the party's attorney, if any; and
- (8) Other special matters.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0416 DUTIES OF THE HEARING OFFICER

In conjunction with the powers in this Section, in General Statute Chapter 58, and in Article 3A of General Statute Chapter 150B, the hearing officer shall perform the following duties, consistent with law:

- (1) Hear and rule on motions;
- (2) Grant or deny continuances;
- (3) Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;
- (4) Examine witnesses when deemed to be necessary to make a complete record and to aid in the full development of material facts in the case;
- (5) Make preliminary, interlocutory, or other orders as deemed to be appropriate;
- (6) Order a summary disposition of the case or any part thereof when there is no genuine issue as to any material fact or recommend dismissal when the case or any part thereof has become moot or for other reasons; and
- (7) Apply sanctions in accordance with 11 NCAC 01 .0423.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0417 CONSENT ORDER; SETTLEMENT; STIPULATION

Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement, or consent order at any time during the proceedings. Parties may enter into such agreements on their own or may ask for a settlement conference with the hearing officer to promote consensual disposition of the case.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0418 SETTLEMENT CONFERENCE

- (a) A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.
- (b) Upon the request of any party, the hearing officer shall assign the case to another hearing officer appointed by the Commissioner under G.S. 58-2-55 for the purpose of conducting a settlement conference. Unless the parties and the other hearing officer agree, a unilateral request for a settlement conference does not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the hearing officer. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.
- (c) All parties shall attend or be represented at a settlement conference. Parties or their representatives shall be prepared to participate in settlement discussions.
- (d) The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.
- (e) At the settlement conference, the parties shall be prepared to provide information and to discuss all matters required in 11 NCAC 01 .0415.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0419 PREHEARING CONFERENCE

- (a) The purpose of the prehearing conference is to simplify the issues to be determined; to obtain stipulations in regard to foundations for testimony or exhibits; to obtain stipulations of agreement on undisputed facts or the application of particular laws; to consider the proposed witnesses for each party; to identify and exchange documentary evidence intended to be introduced at the hearing; to determine deadlines for the completion of any discovery; to establish hearing dates and locations if not previously set; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.
- (b) Upon the request of any party or upon the hearing officer's own motion, the hearing officer may hold a prehearing conference before a contested case hearing. The hearing officer may require the parties to file prehearing statements in accordance with 11 NCAC 01 .0415. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing officer. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the hearing officer. Venue for purposes of a prehearing conference shall be determined in accordance with G.S. 150B-38(e).

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Amended Eff. May 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0420 CONSOLIDATION OF CASES

- (a) The hearing officer may order a joint hearing of any matters at issue in contested cases involving common questions of law or fact or multiple proceedings involving the same or related parties, or may order the cases consolidated or make other orders to reduce costs or delay in the proceedings.
- (b) A party requesting consolidation shall serve a petition for consolidation on all parties to the cases to be consolidated and shall file the original with the hearing officer, together with a certificate of service showing service on all parties as herein required. Any party objecting to the petition shall serve and file his objections within 10 days after service of the petition for consolidation.
- (c) Upon determining whether cases should be consolidated, the hearing officer shall serve a written order on all parties that contains a description of the cases for consolidation and the reasons for the decision.
- (d) Nothing contained in this Rule prohibits the parties from stipulating and agreeing to a consolidation, which shall be granted upon submittal of a written stipulation, signed by every party, to the hearing officer.
- (e) Following receipt of a notice of or order for consolidation, any party may petition for severance by serving it on all other parties and filing with the hearing officer at least seven days before the first scheduled hearing date. If the hearing officer finds

that the consolidation will prejudice any party, he shall order the severance or other relief that will prevent the prejudice from occurring.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0421 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 obligated to exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.

(b) 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 hearing officer 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 hearing officer shall recognize all privileges recognized at law.

(c) When a party serves another party with a request for discovery, that request need not be filed with the hearing officer but shall be served upon all parties.

(d) The parties shall immediately commence to exchange information voluntarily, to seek access as provided by law to public 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 hearing. The hearing officer may shorten or lengthen the period for discovery and adjust hearing dates accordingly and, when necessary, allow discovery during the pendency of the hearing.

(f) No later than 15 days after 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) Sanctions for failure of a party to comply with an order of the hearing officer made pursuant to this Rule shall be as provided for by G.S. 1A-1, Rule 37, to the extent that a hearing officer may impose such sanctions, and 11 NCAC 1 .0423.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0422 SUBPOENAS

(a) Subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be issued in accordance with G.S. 150B-39(c) and G.S. 1A-1 Rule 45.

(b) A subpoena shall be served in the manner provided by G.S. 150B-39(c) and G.S. 1A-1, Rule 45. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. A party seeking an order imposing sanctions for failure to comply with any subpoena issued under this Rule must prove proper service of the subpoena.

(c) Objections to subpoenas shall be heard in accordance with G.S. 150B-39(c) and G.S. 1A-1, Rule 45.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0423 SANCTIONS

(a) If a party fails to appear at a hearing or fails to comply with an interlocutory order of the hearing officer, the hearing officer may:

- (1) Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed to be proved without further evidence;
- (2) Dismiss or grant the motion or petition;

- (3) Suppress a claim or defense; or
- (4) Exclude evidence.

(b) In the event that any party, attorney at law, or other representative of a party engages in behavior that obstructs the orderly conduct of proceedings or would constitute contempt if done in the General Court of Justice, the hearing officer may enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-40(c)(6).

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);

Eff. July 1, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0424 MOTIONS

(a) Any application to the hearing officer for an order shall be by motion, which shall be in writing unless made during a hearing, and must be filed and served upon all parties not less than 10 days before the hearing, if any, is to be held either on the motion or the merits of the case. The nonmoving party has 10 days after the date of service of the motion to file a response, which must be in writing. Motions practice in contested cases before the Commissioner are governed by Rule 6 of the General Rules of Practice for the Superior and District Court.

(b) If any party desires a hearing on the motion, he shall make a request for a hearing at the time of the filing of his motion or response. A response shall set forth the nonmoving party's objections. All motions in writing shall be decided without oral argument unless an oral argument is directed by the hearing officer. When oral argument is directed by the hearing officer, a motion shall be considered submitted for disposition at the close of the argument. A hearing on a motion will be directed by the hearing officer only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. All orders on such motions, other than those made during the course of a hearing, shall be in writing and shall be served upon all parties of record not less than five days before a hearing, if any, is held.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);

Eff. July 1, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0425 INTERVENTION

(a) Any person not named in the notice of hearing who desires to intervene in a contested case as a party shall file a motion to intervene and shall serve the motion upon all existing parties. The motion shall show how the movant's rights, duties, or privileges may be determined or affected by the contested case; shall show how the movant may be directly affected by the outcome or show that the movant's participation is authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate movant's statutory right to intervene if one exists.

(b) Any party may object to the motion for intervention by filing a written notice of objections with the hearing officer within five days after service of the motion if there is sufficient time before the hearing. The notice of objection shall state the party's reasons for objection and shall be served upon all parties. If there is insufficient time before the hearing for a written objection, the objection may be made at the hearing.

(c) When the hearing officer deems it to be necessary to develop a full record on the question of intervention, he may conduct a hearing on the motion to determine specific standards that will apply to each intervenor and to define the extent of allowed intervention.

(d) Pursuant to the powers granted in G.S. 150B-40(c), the hearing officer may allow intervention upon a proper showing under this Rule, unless he finds that the movant's interest is adequately represented by one or more parties participating in the case or unless intervention is mandated by statute, rule, or court decision. An order allowing intervention shall specify the extent of participation permitted the intervenor and shall state the hearing officer's reason. An intervenor may be allowed to:

- (1) File a written brief without acquiring the status of a party;
- (2) Intervene as a party with all the rights of a party; or
- (3) Intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);

Eff. July 1, 1992;

Amended Eff. September 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0426 CONTINUANCES

(a) As used in this Rule, "good cause" includes death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is clearly necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the hearing officer have agreed to a new hearing date or the parties have agreed to a settlement of the case that had been or is likely to be approved by the final decision maker.

(b) As used in this Rule, "good cause" does not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged; unavailability of a witness if the witness' testimony can be taken by deposition; or failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

(c) A request for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for a continuance of a hearing shall be made in writing to the hearing officer and shall be served upon all parties of record. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A request for a continuance filed within five days before a hearing shall be denied unless the reason for the request could not have been ascertained earlier.

(d) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the hearing officer shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient.

(e) A continuance shall not be granted if granting it would prevent the case from being concluded within any statutory or regulatory deadline.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. August 3, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0427 RIGHTS AND RESPONSIBILITIES OF PARTIES

(a) A party may present evidence, rebuttal testimony, and argument with respect to the issues of law and policy, and cross-examine witnesses, including the author of a document prepared by, on behalf of, or for use of the Department and offered in evidence.

(b) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their needs become evident to the requesting party. 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 hearing officer or agreed upon at a prehearing conference.

(c) The hearing officer 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 hearing officer shall simultaneously send a copy to all other parties.

(d) All parties have the continuing responsibility to notify the hearing officer of their current addresses and telephone numbers.

(e) A party need not be represented by an attorney unless the party is a corporate entity. A corporate entity shall not be represented by its President or other officers. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(f) With the approval of the hearing officer, 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 hearing officer.

(g) Before issuing a recommended decision, the hearing officer may order any party to submit proposed findings of fact and written arguments. Before issuing a final decision, the Commissioner may order any party to submit proposed findings of fact and written arguments.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;

Amended Eff. August 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0428 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the hearing officer's own motion, the hearing officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0429 EVIDENCE

(a) The North Carolina Rules of Evidence as found in Chapter 8C of the General Statutes govern in all contested case proceedings, except as provided otherwise in this Section and G.S. 150B-41.

(b) The hearing officer may admit all evidence that has probative value. Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. In accordance with Rule 403 of the N.C. Rules of Evidence, the hearing officer may, in his discretion, exclude any evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(c) Contemporaneous objections by a party or a party's attorney are not required in the course of a hearing to preserve the right to object to the consideration of evidence by the hearing officer in reaching a decision or by the court upon judicial review.

(d) All evidence to be considered in the case, including all records and documents or true and accurate photocopies thereof, shall be offered and made a part of the record in the case. Except as provided in Paragraph (f) of this Rule, factual information or evidence that is not offered shall not be considered in the determination of the case. Documentary evidence incorporated by reference may be admitted only if the materials so incorporated are available for examination by the parties.

(e) Documentary evidence in the form of copies or excerpts may be received in the discretion of the hearing officer or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised about the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy instead of the original.

(f) The hearing officer may take notice of judicially cognizable facts by entering a statement of the noticed fact and its source into the record. Upon a timely request, any party shall be given the opportunity to contest the facts so noticed through submission of evidence and argument.

(g) A party may call an adverse party, or an officer, director, managing agent, or employee of the State or any local government, of a public or private corporation, or of a partnership or association or body politic that is an adverse party; and may interrogate that party by leading questions and may contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party. The adverse party may be examined by that party's counsel upon the subject matter of that party's examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Amended Eff. May 1, 2008; August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0430 OFFICIAL RECORD

(a) The official record of a contested case is available for public inspection upon reasonable request. The hearing officer may, upon good cause shown and consistent with law, order part or all of an official record sealed.

(b) The official record shall be prepared in accordance with G.S. 150B-42.

(c) Contested case hearings shall be recorded either by a recording system or a professional court reporter using stenomask or stenotype.

(d) Transcript costs incurred by the Department shall be charged to or apportioned equally among the party or parties requesting a transcript.

(e) Any other costs incurred by the Department when using a professional court reporter shall be charged to or apportioned equally among the requesting party or parties.

(f) A 24-hour cancellation notice is required in all cases. The party or parties responsible for the cancellation shall be liable for any cancellation fees.

(g) Transcripts of proceedings during which oral evidence is presented will be made only upon request of a party. Transcript costs shall include the cost of an original for the Department. An attorney requesting a transcript on behalf of a party is a

guarantor of payment of the cost. Cost shall be determined under supervision of the hearing officer who, in cases deemed to be appropriate by him, may require an advance security deposit to cover the prospective cost. The security deposit shall be applied to the actual cost and any excess shall be returned to the party that submitted it.

(h) Copies of tapes are available upon written request at a cost of five dollars (\$5.00) per tape.

(i) Copies of Department hearings tapes or Non-Department certified transcripts from those tapes are not part of the official record. Note: Rule 5.3(B) of the Rules of Professional Conduct permits an attorney to advance or guarantee expenses of litigation provided the client remains ultimately liable for such expenses.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0431 RATEMAKING PROCEDURES FOR RATE BUREAU FILINGS

History Note: Authority G.S. 58-2-40(1) ; 58-36-1; 58-36-10; 58-36-15; 58-36-20; 58-36-70;
150B-38;
Eff. January 1, 1993;
Repealed Eff. December 1, 1994.

SECTION .0500 - HEARINGS ON RATE MATTERS AND APPEALS TO THE COMMISSIONER

11 NCAC 01 .0501 PUBLIC HEARINGS ON RATE MATTERS; SPECIAL REQUIREMENTS **11 NCAC 01 .0502 NOTICE OF PUBLIC HEARING ON RATE MATTERS** **11 NCAC 01 .0503 APPEALS TO THE COMMISSIONER**

History Note: Authority G.S. 58-127; 58-131; 58-155.50; 58-155.83; 58-173.11; 58-173.23; 58-173.44; 58-246;
58-248.1; 58-248.6; 58-248.39; 97-104.1; 97-104.6; 58-27.2;
Eff. February 1, 1976;
Repealed Eff. May 12, 1978.

SECTION .0600 - GENERAL DEPARTMENTAL POLICIES

11 NCAC 01 .0601 COMMUNICATIONS WITH INSURANCE COMPANIES

It is the policy of this department, when deemed necessary, to communicate with insurance companies at company expense by means of collect telephone calls, telegrams, and other similar communications.

History Note: Authority G.S. 58-2-40; 58-2-190;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. August 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0602 INSURANCE COMPANIES' RESPONSE TO DEPARTMENTAL INQUIRIES

Every insurer, upon receipt of an inquiry, oral or written, from the department shall furnish the commissioner or his designated representative with a complete and accurate response in writing, unless such response is specifically authorized by the commissioner to be given orally. Such response must be made by the insurer within seven calendar days of receipt of the request, except that the commissioner may extend this time period in an individual case.

History Note: Authority G.S. 58-2-40; 58-2-190;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. August 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

11 NCAC 01 .0603 FACSIMILE COUNTERSIGNATURE NOT VALID

History Note: Authority G.S. 58-2-40; 58-33-30(i); 58-33-60;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Amended Eff. July 1, 1992; August 1, 1988;
Repealed Eff. July 1, 2012.

11 NCAC 01 .0604 SPECIAL AGENT NOT RESIDENT/COUNTERSIGNATURE PURPOSES
11 NCAC 01 .0605 HEARING AND LICENSE REVOCATION PROCEEDINGS

History Note: Authority G.S. 58-9.3; 58-9.4; 58-37; 58-38; 58-39; 58-44; 58-44.4A;
58-56.3; 66-49.13; 85C-17; 85C-18;
Eff. February 1, 1976;
Readopted Eff. May 12, 1978;
Repealed Eff. August 1, 1988.

SECTION .0700 - ADMINISTRATION DIVISION

11 NCAC 01 .0701 PURPOSES OF DIVISION
11 NCAC 01 .0702 DIVISION PERSONNEL

History Note: Authority G.S. 58-7.1; 58-7.3;
Eff. May 12, 1978;
Repealed Eff. July 1, 1988.