

18 NCAC 06C .0105 ARTICLE 3A CONTESTED CASE PROCEDURES

- (a) This Rule applies to proceedings under Article 3A of Chapter 150B of the General Statutes.
- (b) The Administrator shall notify the respondents in a contested case proceeding under G.S. 150B, Article 3A, as to whether the hearing of the contested case will be:
 - (1) referred to the Office of Administrative Hearings;
 - (2) conducted by the Administrator; or
 - (3) conducted by a hearing officer appointed by the Administrator.
- (c) The Administrative Petition is a pleading submitted to the Administrator which:
 - (1) is denominated as an Administrative Petition;
 - (2) is captioned as a proceeding by the Division acting as petitioner brought under the authority of the Administrator against the person(s) named as respondents;
 - (3) is signed by counsel for the Division;
 - (4) sets forth the factual and legal basis for any request that the Administrator take action permitted by law or rule against any person subject to the jurisdiction of the Administrator; and,
 - (5) is used in those proceedings in which the Administrator is not required first to issue a notice of hearing before taking an administrative action.
- (d) Each named respondent shall be served with the Administrative Petition and a notice of rights and opportunity for a hearing. If the Administrator issues an Order in response to the Administrative Petition, the Order shall be served on each named respondent.
- (e) The Division may commence a contested case by issuing a notice of hearing, a pleading filed with the Administrator, which:
 - (1) is denominated as a notice of hearing;
 - (2) is captioned as a proceeding by the Division acting as petitioner brought under the authority of the Administrator against the person(s) named as respondents;
 - (3) is signed by counsel for the Division;
 - (4) sets forth the factual and legal basis for any request that the Administrator take action permitted by law or rule against any person subject to the jurisdiction of the Administrator;
 - (5) lists the sanctions that may be imposed as a result of the hearing; and
 - (6) gives the day, date, time, and place of the hearing, as set by the Administrator.
- (f) The Division shall serve the notice of hearing upon the person(s) named as respondents.
- (g) When a respondent served with an Administrative Petition and notice of rights and opportunity for a hearing requests a hearing:
 - (1) the Administrative Petition shall serve as the notice of hearing with respect to the factual and legal basis for the charges brought and sanctions sought against a respondent; and
 - (2) the Administrator, a hearing officer appointed by the Administrator, or an administrative law judge when the case is assigned to the OAH, shall issue a separate order, notifying respondent of the date, time and place of the hearing.
- (h) There are no specific forms required for answers, motions or other pleadings in contested cases before the Administrator. Respondents and their counsel may caption such documents in the style and manner shown on the notice of hearing in their case. All pleadings, other than oral motions during a hearing, shall:
 - (1) be made on 8 ½ by 11 inch paper with legible writing or printing;
 - (2) contain the caption or case number of the matter in which the pleading is made;
 - (3) apprise the Administrator of the matters alleged or to which the pleading relates; and
 - (4) if a motion, state the relief sought and the legal basis for the motion.

History Note: Authority G.S. 78A-46; 78A-47; 78A-49; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-163.013; 150B-38(h); 150B-40; Eff. April 1, 2009; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.