

SUBCHAPTER 06C – INVESTIGATIONS, ENFORCEMENT AND HEARINGS

18 NCAC 06C .0101 LETTER OF INQUIRY

(a) The Division may issue a Letter of Inquiry to anyone engaging in activities which may subject them to the jurisdiction of the Administrator. The purpose of a Letter of Inquiry is to obtain information or documents necessary to the understanding of matters under investigation.

(b) Anyone who is subject to the jurisdiction of the Administrator and who receives a Letter of Inquiry shall respond to the Letter of Inquiry in writing with:

- (1) such information as is within his or her personal knowledge;
- (2) recorded information in any form, including business records, under the recipient's control; and
- (3) the identity of any other person whom the recipient believes has information relevant to the subject of a Letter of Inquiry who is subject to the jurisdiction of the Administrator.

History Note: Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 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.

18 NCAC 06C .0102 INVESTIGATIVE SUBPOENAS

(a) When the Administrator issues subpoenas for testimony, written statements or documents during the course of an investigation, the recipient of a subpoena may object to the subpoena. Objections to compliance with a subpoena, including but not limited to, claims of privilege, hardship, or inadequate time for compliance, shall be filed in writing with the Administrator. Objections shall be filed no later than the time for compliance set in the subpoena. Written objections to a subpoena shall state the legal and factual basis for the objections.

(b) The recipient of a subpoena who files written objections to the subpoena shall comply with any portions of the subpoena which are not expressly included in the written objections.

(c) Upon receipt of written objections to an investigative subpoena, the Division may attempt to reach a written settlement of the objections with the recipient.

(d) This Rule does not restrict, or constitute a pre-condition to, the Administrator's right to seek enforcement of an investigative subpoena in court.

History Note: Authority G.S. 78A-46; 78A-49; 78C-27; 78C-30; 78C-87; 78D-21; 78D-25; 78D-26; 78D-27; 105-163.013; 150B-38(h); 150B-40;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06C .0103 ADMINISTRATIVE HEARINGS

(a) The Division shall bring proceedings pursuant to the statutes and rules it enforces in the name of the Division against one or more respondents.

(b) The Division shall commence proceedings before the Administrator in which a sanction or payment, other than a civil monetary penalty or reimbursement of investigation costs is sought, as provided in Chapters 78A, 78C, 78D, Article 4, Part 5, of Chapter 105 and Article 3A, Chapter 150B, of the General Statutes and the rules in this Chapter.

(c) Commencement of a proceeding under Article 3 of Chapter 150B of the General Statutes for a civil monetary penalty or reimbursement of investigation costs does not preclude commencement of a proceeding against the same respondent under Article 3A of Chapter 150B of the General Statutes for other sanctions.

History Note: Authority G.S. 78A-47; 78A-49; 78C-28; 78C-30; 78C-90; 78C-91; 78D-21; 78D-22; 78D-27; 78D-31; 105-163.013; 150B-38(h); 150B-40;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 06C .0104 SETTLEMENT

(a) The Division may negotiate settlements with a respondent or counsel for a respondent.

- (b) The Division may negotiate and submit settlements for approval prior to the issuance of a Notice of Hearing or an Administrative Petition. Settlements shall be presented to the Administrator as soon as practicable before a scheduled hearing date. The Division shall prepare the final written settlement proposal in all cases.
- (c) The Administrator shall consider a final written settlement proposal only if the final written settlement proposal:
- (1) is signed by the respondent and counsel, if represented by counsel;
 - (2) includes the respondent's waiver of all further procedural and substantive rights, including hearings, issuance of notice of hearing, service, judicial review and collateral attacks or other proceedings contesting the terms of the settlement;
 - (3) contains the respondent's agreement that rejection of the final written settlement proposal shall not disqualify the Administrator from acting as the trier of fact or final agency decision maker; and
 - (4) is within the authority of the Administrator.
- (d) The Administrator may, with the written consent of respondent or counsel for respondent, consider a final written settlement proposal *ex parte*.
- (e) Parties are not bound by matters contained in a settlement rejected by the Administrator.
- (f) Rejection of a proposed settlement alone does not constitute grounds for continuance of a previously scheduled hearing but may be considered in deciding whether the hearing should be continued.
- (g) A settlement approved by the Administrator is the Final Order as to any respondent who has signed the settlement. The Division shall serve the Final Order upon the respondents and their counsel.

History Note: Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 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.

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.

18 NCAC 06C .0106 TEMPORARY ORDERS

(a) The Division may seek a temporary or summary order at any time as follows:

- (1) If the Division seeks a temporary or summary order prior to the issuance of a notice of hearing, the Division shall file an *ex parte* Administrative Petition supported as required by this Rule.
- (2) If the Division seeks a temporary or summary order during a contested case proceeding, it shall file and serve an appropriate pleading in that proceeding, supported as required by this Rule.

(b) When seeking a temporary or summary order, the Division shall support the request with evidence including at least one sworn affidavit or its equivalent to support the order.

(c) The Administrator (or an appointed hearing officer, or an assigned administrative law judge), upon findings and conclusions that the evidentiary showing by the Division supports the request, may issue a temporary cease and desist order or summary order suspending, denying, postponing or taking any other action as permitted by applicable law against any license, registration or exemption.

(d) Any temporary or summary order issued under this Rule shall:

- (1) be in writing and signed by the person who issues it;
- (2) make findings of fact supporting the factual basis for the temporary or summary action;
- (3) make conclusions of law supporting the temporary or summary action;
- (4) state the conduct prohibited or identify the registration, filing, license or other privilege suspended, denied, revoked, postponed or against which other action has been taken; and
- (5) be served upon the persons subject to the order together with any other documents that may be required by applicable statutes and rules.

(e) A temporary or summary order shall remain in effect until rescinded, modified or vacated by the Administrator, or until a final order is issued. Orders issued under this Rule are not final agency decisions. The Division's procedures for issuing final orders are found in 18 NCAC 06C .0108.

History Note: Authority G.S. 78A-46; 78A-49; 78C-27; 78C-30; 78C-87; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-160.013; 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.

18 NCAC 06C .0107 CONDUCT OF HEARING

(a) Scope. This Rule applies to all hearings under G.S. 150B, Article 3A, conducted by the Administrator or a hearing officer designated by the Administrator. Hearings referred to the Office of Administrative Hearings ("OAH") are governed by the rules adopted by OAH. This Rule also applies to all other hearings which the Administrator is required to conduct and which are not by law required to be heard by OAH.

- (b) Discovery. All discovery shall be conducted pursuant to G.S. 150B-39.
- (c) Continuances. A motion for the continuance of a scheduled hearing shall be:
 - (1) made in writing;
 - (2) filed with the Administrator at least 10 business days prior to the scheduled hearing; and
 - (3) served upon the opposing party or counsel.
- (d) Evidence. Evidence introduced at a hearing conducted under these rules shall conform to G.S. 150B-41. The Administrator or the hearing officer designated by the Administrator shall rule upon the objections of any party to the admission of evidence.
- (e) Subpoenas.
 - (1) If a party to a contested case seeks to have witnesses or documents subpoenaed to the hearing, the party or counsel shall submit a written request for the issuance of subpoenas to the Administrator or designated hearing officer in sufficient time in advance of the hearing for preparation and issuance of the subpoenas by the Administrator or designated hearing officer.
 - (2) Service of a subpoena issued shall be the responsibility of the party requesting the subpoena. Service and return of service shall be made in the manner provided for in G.S. 1A-1, Rule 4.
 - (3) The Administrator or designated hearing officer shall issue a subpoena that complies with G.S. 1A-1, Rule 45.
 - (4) Any party or person served with a subpoena issued under this subsection who objects to the subpoena shall make and file the written objection required by G.S. 1A-1, Rule 45, with the Administrator or hearing officer assigned to the case.
- (f) The conduct of the hearing shall conform to G.S. 150B-40.

History Note: Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 105-163.013; 150B-38; 150B-40;
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18 NCAC 06C .0108 FINAL ORDER

- (a) Proceedings based on temporary orders – when a final order may issue. The Administrator may issue a final order when no hearing has been requested by a respondent within 30 business days after receipt of a Temporary Order in any proceeding:
 - (1) initiated by serving a respondent with a temporary or summary order; and
 - (2) in which the statute under which the proceeding was commenced provides that the temporary or summary order shall become permanent if the respondent fails to request a hearing.
- (b) Proceedings based on temporary orders – requirements for final order. The Administrator shall issue a final order making the temporary cease and desist or summary order permanent:
 - (1) based solely upon the evidence in the record;
 - (2) including findings that the proceeding:
 - (A) was commenced;
 - (B) an order was issued;
 - (C) all necessary pleadings and notices were served as required by law; and
 - (D) the respondent failed to request a hearing within the time prescribed by law, file a responsive pleading or make any other submission.
- (c) Article 3A proceedings before the Administrator or a designated hearing officer. After a hearing by the Administrator or hearing officer designated by the Administrator, the decision of the Administrator or hearing officer shall be made in the form of a final order containing:
 - (1) findings of fact;
 - (2) conclusions of law; and
 - (3) a decree as to the action of the agency in the matters addressed in the hearing.
- (d) Article 3A proceedings referred to OAH. When a contested case hearing subject to G.S. 150B, Article 3A, has been referred to and heard by the Office of Administrative Hearings ("OAH"), and the proposed agency decision has been filed with the Administrator by the OAH:

- (1) the Division shall serve the proposed agency decision upon the respondent with a notice of rights provided by G.S. 150B-40(e) including notice of the day, time and place where the parties may appear and make oral argument concerning the proposed final agency decision;
- (2) written exceptions, proposed findings of fact and written arguments shall be filed with the Administrator and served upon any opposing party or counsel at least 10 business days before the scheduled oral argument; and
- (3) after reviewing any written submissions and hearing the oral argument of the parties, the Administrator shall issue a final order containing findings of fact, conclusions of law, and a decree as to the agency action in the matters addressed in the hearing.

(e) Article 3 proceedings heard by OAH. When a contested case has been heard by OAH under G.S. 150B, Article 3, and the proposed final decision has been returned to the Administrator by OAH, the Administrator shall by letter notify any respondent or counsel for any respondent of the date, not less than 30 days from the date of the letter, by which written exceptions or written arguments regarding the proposed final decision must be submitted to the Administrator.

(f) Service. The Division shall serve the final order served upon the respondents or their counsel.

History Note: Authority G.S. 78A-18; 78A-29; 78A-30; 78A-39; 78A-46; 78A-47; 78A-49; 78C-19; 78C-27; 78C-28; 78C-30; 78C-90; 78C-91; 78D-4; 78D-21; 78D-22; 78D-25; 78D-26; 78D-27; 78D-30; 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.