

SUBCHAPTER 8C - CONTESTED CASES

SECTION .0100 - PROCEDURE IN CONTESTED CASES

21 NCAC 08C .0101 ADMINISTRATIVE HEARINGS **21 NCAC 08C .0102 NOTIFICATION**

History Note: *Authority G.S. 93-12; 150B-2; 150B-38;*
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. October 1, 1984;
 Repealed Eff. March 1, 1987.

21 NCAC 08C .0103 ADDITIONAL INFORMATION ON NOTICES OF HEARINGS

In addition to the items required by G.S. 150B-38 to be included in a notice of hearing for a contested case before the Board, such a notice shall include the following information:

- (1) the name, title, address and phone number of Board personnel to contact for further information or discussion; and
- (2) the date and place for any pre-hearing conference.

History Note: *Authority G.S. 93-12; 150B-38;*
 Eff. May 1, 1989;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0104 WRITTEN PETITION FOR INTERVENTION

A person desiring to intervene in a contested case must file a written petition with the Board at its address set forth in 21 NCAC 8A .0102. A petition to intervene shall be filed in accordance with G.S. 1A-1, Rule 24.

History Note: *Authority G.S. 93-12; 150B-38;*
 Eff. May 1, 1989;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0105 NOTICE OF ALLOWANCE OR DENIAL OF PETITION TO INTERVENE

(a) If a petition for intervention is one of right, or if a petition for permissive intervention is allowed by the Board, the Board will promptly send written notice of the intervention to all parties, including the intervenor. In cases of permissive intervention, such notification will also include a statement of any limitations of time, subject matter, evidence or any other matters the Board thereby imposes upon the intervenor.

(b) If the Board denies a petition for permissive intervention, it will promptly send written notice of such denial to the petitioner and all parties setting forth its reasons for denying the petition.

History Note: *Authority G.S. 93-12; 150B-38;*
 Eff. May 1, 1989;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0106 RESERVED FOR FUTURE CODIFICATION

21 NCAC 08C .0107 DISQUALIFICATION OF BOARD MEMBER

(a) A Board member shall be disqualified from participating in the hearing of any contested case or performing any duties related to a contested case if personal bias or other factors would keep the member from being able to participate in the hearing or to perform any duty related to the contested case or hearing in an impartial manner.

(b) If a party to a hearing or any other interested person has a reasonable good faith belief that a Board member should be disqualified, that person shall submit an affidavit of disqualification to the Board.

History Note: Authority G.S. 93-12; 150B-40;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0108 AFFIDAVIT OF DISQUALIFICATION

An affidavit of disqualification must state all the facts the affiant deems relevant to the disqualification of the Board member.

History Note: Authority G.S. 93-12; 150B-40;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0109 FILING AFFIDAVIT OF DISQUALIFICATION

An affidavit of disqualification must be filed with the Board office before commencement of the hearing. However, it may be filed after the commencement of the hearing if it is filed within a reasonable time after the affiant knows or reasonably should know the facts giving rise to the affiant's reasonable belief that the Board member should be disqualified from participating in a contested case under this Section.

History Note: Authority G.S. 93-12; 150B-40;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0110 DETERMINATION OF DISQUALIFICATION

(a) The members of the Board not challenged in an affidavit of disqualification shall determine whether the challenged Board member should be disqualified from participating in the hearing of a contested case. In making this determination, those Board members may:

- (1) call upon the challenged Board member to furnish relevant information; and
- (2) appoint a member of the Board or a member of the staff to investigate the allegations of the affidavit and report their findings and recommendations to the Board.

(b) The Board will maintain a record of the proceedings on disqualification and a written summary of its conclusions as part of the record of the contested case.

History Note: Authority G.S. 93-12; 150B-40;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0111 NEW HEARING AFTER DISQUALIFICATION

(a) Upon request of a party to a contested case, the Board will conduct a new hearing of the contested case if a Board member was disqualified after the beginning of the initial hearing and if either:

- (1) less than a majority of Board members remained at the hearing subsequent to the disqualification, or
- (2) when the Board determines that substantial prejudice would result if a new hearing was not conducted.

(b) The Board member who has been disqualified shall not participate in the determination of whether substantial prejudice would result if a new hearing was not conducted.

History Note: Authority G.S. 93-12; 150B-40;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0112 RESERVED FOR FUTURE CODIFICATION

21 NCAC 08C .0113 RESERVED FOR FUTURE CODIFICATION

21 NCAC 08C .0114 PRE-HEARING CONFERENCE

(a) The Board may itself conduct an informal pre-hearing conference for the purposes set forth in 21 NCAC 8C .0115 or it may designate a committee to conduct such a conference. The committee so designated may be composed entirely of staff members.

(b) Evidence of conduct or evidence of statements made during the pre-hearing conference are not admissible at the hearing in a contested case. However, evidence otherwise discoverable shall not be excluded merely because it is presented during the pre-hearing conference.

History Note: Authority G.S. 93-12; 150B-38;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0115 PURPOSES OF A PRE-HEARING CONFERENCE

The purposes of a pre-hearing conference in a contested case are:

- (1) to determine the possibility of simplifying or eliminating the issues;
- (2) to facilitate the stipulation to facts or findings by the parties;
- (3) to identify evidence which will be needed at the hearing;
- (4) to determine the validity of proposed evidence;
- (5) to determine the need for depositions or subpoenas;
- (6) to determine the relevance of findings in some other case to the case at hand;
- (7) to determine the need for consolidation of cases or joint hearings; and
- (8) to determine any other matters which will reduce cost or save time or otherwise aid in the expeditious disposition of the contested case.

History Note: Authority G.S. 93-12; 150B-38;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0116 NOTICE OF PRE-HEARING CONFERENCE

Notice of a pre-hearing conference in a contested case will be given in the notice of hearing for the case or, if the decision to hold a pre-hearing conference is made after the notice of hearing has been sent, in a subsequent notice.

History Note: Authority G.S. 93-12; 150B-11(1); 150B-38;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0117 RESERVED FOR FUTURE CODIFICATION

21 NCAC 08C .0118 CONTINUANCES

A continuance of a pre-hearing conference will be granted to a party only under compelling circumstances, especially when a continuance has been previously requested by and granted to the party. Under no circumstances is the Board required to grant continuances.

History Note: Authority G.S. 93-12; 150B-11(1); 150B-38;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0119 RESERVED FOR FUTURE CODIFICATION

21 NCAC 08C .0120 RESERVED FOR FUTURE CODIFICATION

21 NCAC 08C .0121 SERVICE OF SUBPOENAS

(a) Subpoenas shall be served as the officer issuing the subpoenas shall direct and as may be appropriate to the circumstances of the case. The Executive Director, Board counsel, or staff member designated by the Executive Director may serve subpoenas on behalf of the Board pursuant to G.S. 1A-1, Rule 45(e).

(b) Subpoenas shall be issued in duplicate with a "Return of Service" form attached to each copy. The person serving the subpoena shall fill out the attached "Return of Service" form for each copy and promptly return one copy of the subpoena and the completed "Return of Service" form to the Board office.

History Note: Authority G.S. 93-12; 150B-39;
Eff. May 1, 1989;
Amended Eff. March 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0122 OBJECTIONS TO SUBPOENAS

- (a) A person who is subject to a subpoena or a party to the contested case may file an objection to the subpoena with the Board within ten days of the issuance of the subpoena.
- (b) An objection to a subpoena must include a concise but complete statement of reasons why the subpoena should be revoked or modified. These reasons may include, for example, lack of relevancy of the evidence requested, lack of particularity in the description of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as the evidence is privileged or the appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought or would produce some other undue hardship.
- (c) The person objecting to the subpoena must serve a copy of the objection upon the party who requested the subpoena. Service must be on or before the date the objection is filed with the Board's office and may be accomplished by the United States Postal Service.

History Note: Authority G.S. 93-12; 150B-39;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0123 RESPONSES TO OBJECTIONS TO SUBPOENAS

- (a) The person requesting the subpoena may file a written response to the objection to the subpoena with the Board within ten days of service of the objection.
- (b) The person responding shall also serve a copy of the response upon the person who objected to the subpoena. Service must be on or before the date the response is filed with the Board's office and may be accomplished by the United States Postal Service.

History Note: Authority G.S. 93-12; 150B-39;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0124 HEARINGS ON SUBPOENA CHALLENGES

- (a) After receipt of an objection to a subpoena, the Board shall schedule a public hearing on the objection within a reasonable time and shall issue a notice of hearing to the person requesting the subpoena and to the person objecting to it. The Board may also give notice to all other parties to the contested case.
- (b) The hearing on objections to a subpoena shall be limited to the issues properly raised by the objection and any response, and all parties to the contested case may present evidence at the hearing relevant to those issues.
- (c) Promptly after the close of a hearing, the Board shall rule on the objection to the subpoena and shall issue a written decision. The copy of the decision will be issued to all parties to the hearing and will be made a part of the permanent record of the contested case.

History Note: Authority G.S. 93-12; 150B-39;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0125 RECORDS OF CONTESTED CASES

A copy of the record of a contested case proceeding may be obtained by requesting such in writing from the Board.

History Note: Authority G.S. 93-12; 150B-42;
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

21 NCAC 08C .0126 HEARING EXHIBITS

- (a) The Board staff shall serve upon the Respondent copies of documents it plans to offer as evidence at a contested case hearing at least 14 business days prior to the scheduled hearing.
- (b) Respondent shall likewise serve upon the Board staff copies of documents Respondent plans to offer as evidence at the hearing at least 14 business days prior to the scheduled hearing.
- (c) Additional exhibits may be introduced by the Board staff or Respondent and admitted into evidence at the hearing if the presiding officer determines that the document(s) were not otherwise available to the party 14 business days prior to the hearing or the documents(s) are offered in response to documents served by the other party.
- (d) Respondents shall supply at the hearing 16 copies of any document(s) that is of this Rule not served upon the Board staff in advance as prescribed in Paragraph (b) of this Rule.

History Note: Authority G.S. 93-12; 150B-41;
Eff. February 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014.

SECTION .0200 - REQUEST FOR A HEARING

21 NCAC 08C .0201	REQUEST
21 NCAC 08C .0202	PREREQUISITES
21 NCAC 08C .0203	WRITTEN REQUEST
21 NCAC 08C .0204	CONTENTS OF REQUEST
21 NCAC 08C .0205	ACKNOWLEDGEMENT

History Note: Authority G.S. 93-12; 150B-2; 150B-38;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. October 1, 1984; April 1, 1982;
Repealed Eff. March 1, 1987.

SECTION .0300 - THE GRANTING OF HEARING REQUESTS

21 NCAC 08C .0301	GRANTING A HEARING
21 NCAC 08C .0302	CRITERIA
21 NCAC 08C .0303	ISSUANCE
21 NCAC 08C .0304	APPROVAL OF REQUEST

History Note: Authority G.S. 93-12; 150B-2; 150B-11(1); 150B-23; 150B-38;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. October 1, 1984;
Repealed Eff. March 1, 1987; October 1, 1984.

SECTION .0400 - WAIVER

21 NCAC 08C .0401	FAILURE TO NOTIFY
21 NCAC 08C .0402	FAILURE TO APPEAR

History Note: Authority G.S. 93-12; 150B-11(1); 150B-25; 150B-40;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Repealed Eff. March 1, 1987; October 1, 1984.

SECTION .0500 - NOTICE

21 NCAC 08C .0501 REASONABLE NOTICE
21 NCAC 08C .0502 NOTICE AND HEARING

History Note: Authority G.S. 93-12; 150B-38;
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. June 1, 1985; October 1, 1984;
 Repealed Eff. March 1, 1987.

21 NCAC 08C .0503 ADDITIONAL INFORMATION ON NOTICES AND HEARINGS

History Note: Authority G.S. 93-12; 150B-38;
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. June 1, 1985; October 1, 1984;
 Repealed Eff. May 1, 1989.

21 NCAC 08C .0504 WRITTEN ANSWERS TO NOTICE

History Note: Authority G.S. 93-12; 150B-25;
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. October 1, 1984; April 1, 1982;
 Repealed Eff. March 1, 1987.

SECTION .0600 - WHO SHALL HEAR CONTESTED CASES

21 NCAC 08C .0601 HEARING OFFICERS
21 NCAC 08C .0602 APPOINTMENT

History Note: Authority G.S. 93-12; 150B-32; 150B-40;
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. October 1, 1984;
 Repealed Eff. March 1, 1987; October 1, 1984.

SECTION .0700 - PLACE OF HEARING

21 NCAC 08C .0701 LOCATION
21 NCAC 08C .0702 ALTERNATIVE LOCATIONS

History Note: Authority G.S. 93-12; 150B-24; 150B-38;
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. June 1, 1985; April 1, 1982;
 Repealed Eff. March 1, 1987; June 1, 1985.

SECTION .0800 - INTERVENTION

21 NCAC 08C .0801 REQUIREMENTS

21 NCAC 08C .0802 PERMISSIVE INTERVENTION
21 NCAC 08C .0803 DISCRETIONARY INTERVENTION
21 NCAC 08C .0804 ADVISABILITY

History Note: *Authority G.S. 93-12; 150B-38;*
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Repealed Eff. March 1, 1987.

21 NCAC 08C .0805 WRITTEN PETITION
21 NCAC 08C .0806 PETITION FOR INTERVENTION
21 NCAC 08C .0807 ALLOWANCE
21 NCAC 08C .0808 DENIAL

History Note: *Authority G.S. 93-12; 150B-38;*
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. April 1, 1987; October 1, 1984; April 1, 1982;
 Repealed Eff. May 1, 1989.

SECTION .0900 - HEARING OFFICERS

21 NCAC 08C .0901 HEARING OFFICER
21 NCAC 08C .0902 CONDUCT

History Note: *Authority G.S. 93-12; 150B-25;*
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. June 1, 1985; October 1, 1984;
 Repealed Eff. March 1, 1987.

21 NCAC 08C .0903 BIAS OF BOARD MEMBER

History Note: *Authority G.S. 93-12; 150B-25;*
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. June 1, 1985;
 Repealed Eff. May 1, 1989.

21 NCAC 08C .0904 BIAS CLAIMED BY PARTY

History Note: *Authority G.S. 93-12; 150B-25;*
 Eff. February 1, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. October 1, 1984;
 Repealed Eff. March 1, 1987.

21 NCAC 08C .0905 AFFIDAVIT OF DISQUALIFICATION
21 NCAC 08C .0906 FILING AFFIDAVIT
21 NCAC 08C .0907 DISQUALIFICATION
21 NCAC 08C .0908 NEW HEARING

History Note: *Authority G.S. 93-12; 150B-25; 150B-40;*
 Eff. February 1, 1976;

Readopted Eff. September 26, 1977;
Amended Eff. October 1, 1984;
Repealed Eff. May 1, 1989.

21 NCAC 08C .0909 DISQUALIFICATION OF ENTIRE BOARD

History Note: Authority G.S. 93-12; 150B-25;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Repealed Eff. March 1, 1987.

21 NCAC 08C .0910 DETERMINATION TO CONTINUE

History Note: Authority G.S. 93-12; 150B-40;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. April 1, 1987;
Repealed Eff. May 1, 1989.

21 NCAC 08C .0911 RECORDS

History Note: Authority G.S. 93-12; 150B-34; 150B-37;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Repealed Eff. March 1, 1987.