

## SUBCHAPTER 14C - CONTESTED CASES

### SECTION .0100 - GENERAL RULES

#### 21 NCAC 14C .0101 ADMINISTRATIVE HEARINGS

Whenever the Board proposes to deny, revoke, or suspend a license, permit, certificate of registration, or letter of approval issued by it, or at any other time when it deems a hearing legally required, it must give notice to the person affected of the Board's proposed action and the person's right to a hearing. The person may request a hearing by mailing or delivering to the Board a written request for a hearing. The Board will take the proposed action described in the notice unless it receives a request for a hearing prior to the date on which the Board proposes to act or the date specified in the notice. A request mailed to the Board is deemed timely if postmarked prior to the date on which the Board proposes to act or the date specified in the notice.

*History Note:* Authority G.S. 150B-38(h); 150B-40;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989; April 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

#### 21 NCAC 14C .0102 HEARINGS

*History Note:* Authority G.S. 88-23; 150B-23;  
Eff. February 1, 1976;  
Repealed Eff. April 1, 1988.

#### 21 NCAC 14C .0103 PRESIDING OFFICER

If no other presiding officer has been designated by the Board, or if the designated presiding officer is unavailable or disqualifies himself, the chairman of the Board shall act as presiding officer for purposes of issuing subpoenas, ordering the production of records, responding to motions for continuances or extensions of time, controlling and ruling on issues surrounding discovery, and otherwise acting on matters arising in connection with a pending hearing and shall have all powers granted to the presiding officer under Article 3A of Chapter 150B of the North Carolina General Statutes.

*History Note:* Authority G.S. 150B-38(h); 150B-40(b);  
Eff. April 1, 1988;  
Amended Eff. January 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

### SECTION .0200 - REQUEST FOR A HEARING

#### 21 NCAC 14C .0201 REQUEST

When any person believes his rights, duties or privileges have been affected by administrative action of the Board, he may request an administrative hearing.

*History Note:* Authority G.S. 150B-2; 150B-38(h);  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

#### 21 NCAC 14C .0202 PREREQUISITES

*History Note:* Authority G.S. 88B-4; 150B-38(h);  
Eff. February 1, 1976;  
Amended Eff. August 1, 2000; July 1, 1993; August 1, 1988;  
Repealed Eff. September 1, 2011.

**21 NCAC 14C .0203 WRITTEN REQUEST**

Following such an informal contact with the Board as set out in 21 NCAC 14C .0202, if still dissatisfied, one may file a written request for an administrative hearing with the chairman of the Board at its address.

*History Note:* Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

**21 NCAC 14C .0204 CONTENTS OF REQUEST**

A written request for an administrative hearing must contain the following information:

- (1) name and address of petitioner,
- (2) a concise statement of the Board action being challenged,
- (3) a concise statement of the way in which the petitioner has been aggrieved, and
- (4) a clear and specific demand for a hearing.

*History Note:* Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

**21 NCAC 14C .0205 ACKNOWLEDGEMENT**

Requests for administrative hearings must be promptly acknowledged by the Board and, if the person making the request is a person aggrieved, a hearing must be scheduled within a reasonable amount of time.

*History Note:* Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

**SECTION .0300 - THE GRANTING OF HEARING REQUESTS**

**21 NCAC 14C .0301 GRANTING A HEARING**

*History Note:* Authority G.S. 88-23; 150B-2; 150B-23;  
Eff. February 1, 1976;  
Repealed Eff. August 1, 1988.

**21 NCAC 14C .0302 CRITERIA**

**21 NCAC 14C .0303 ISSUANCE**

**21 NCAC 14C .0304 APPROVAL OF REQUEST**

*History Note:* Authority G.S. 150B-11(1); 150B-23; 150B-38;  
Eff. February 1, 1976;  
Repealed Eff. April 1, 1988.

**SECTION .0400 - WAIVER**

**21 NCAC 14C .0401 FAILURE TO NOTIFY**

*History Note:* Authority G.S. 88-23; 150B-11(1); 150B-25;

*Eff. February 1, 1976;*  
*Repealed Eff. January 1, 1989.*

**21 NCAC 14C .0402      FAILURE TO APPEAR**

*History Note:      Authority G.S. 88-23; 150B-11(1); 150B-25;*  
*Eff. February 1, 1976;*  
*Repealed Eff. January 1, 1989.*

**SECTION .0500 - NOTICE**

**21 NCAC 14C .0501      REASONABLE NOTICE**  
**21 NCAC 14C .0502      NOTICE AND HEARING**

*History Note:      Authority G.S. 88-23; 150B-23;*  
*Eff. February 1, 1976;*  
*Repealed Eff. April 1, 1988.*

**21 NCAC 14C .0503      ADDITIONAL INFORMATION ON NOTICES OF HEARINGS**

In addition to the items specified in North Carolina General Statutes 150B-38(b) to be included in the notice, notices of administrative hearings must include the following information:

- (1) the name, position, address and phone number of a member, employee, or agent of the Board to contact for further information or discussion;
- (2) the date and place for any prehearing conference;
- (3) the right to file a written response to the allegations in the notice of hearing no later than ten days prior to the scheduled hearing date; and
- (4) other information deemed relevant to informing the party or parties as to the procedure for the hearing.

*History Note:      Authority G.S. 150B-38;*  
*Eff. February 1, 1976;*  
*Amended Eff. January 1, 1989; September 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

**21 NCAC 14C .0504      WRITTEN ANSWERS TO NOTICE**

*History Note:      Authority G.S. 88-23; 150B-25;*  
*Eff. February 1, 1976;*  
*Amended Eff. April 1, 1988;*  
*Repealed Eff. January 1, 1989.*

**SECTION .0600 - WHO SHALL HEAR CONTESTED CASES**

**21 NCAC 14C .0601      HEARING PANEL**

Administrative hearings before the Board will normally be heard by a majority of the Board.

*History Note:      Authority G.S. 150B-38; 150B-40;*  
*Eff. February 1, 1976;*  
*Amended Eff. January 1, 1989; April 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

**21 NCAC 14C .0602      APPOINTMENT**

*History Note:* Authority G.S. 88-23; 150B-32;  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1989.

#### **SECTION .0700 - PLACE OF HEARING**

**21 NCAC 14C .0701 LOCATION**  
**21 NCAC 14C .0702 ALTERNATIVE LOCATIONS**

*History Note:* Authority G.S. 88-23; 150B-24;  
Eff. February 1, 1976;  
Repealed Eff. April 1, 1988.

#### **SECTION .0800 - INTERVENTION**

**21 NCAC 14C .0801 INTERVENTION OF RIGHT**

A motion to intervene of right as provided for in the North Carolina Rules of Civil Procedure, Rule 24, must be granted if timely and the petitioner meets the criteria of that rule. For the purposes of intervention, any time prior to the designated hearing's termination must be considered timely unless a grant of the right to intervene would cause substantial prejudice to the rights of a party, substantial added expense, or compellingly serious inconvenience to the parties.

*History Note:* Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

**21 NCAC 14C .0802 PERMISSIVE INTERVENTION**

A motion to intervene permissively as provided for in North Carolina Rules of Civil Procedure, Rule 24, must be granted if the petitioner meets the criteria of that rule and the Board determines that:

- (1) There is sufficient legal or factual similarity between the petitioner's rights, privileges, or duties and those of the other parties to the hearing; and
- (2) Permitting intervention by the petitioner as a party would aid the purposes of the hearing.

*History Note:* Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

**21 NCAC 14C .0803 DISCRETIONARY INTERVENTION**

Discretionary intervention must be allowed by the Board upon a motion made before the termination of the hearing itself when the Board finds intervention would be helpful to a determination of the issues in the hearing.

*History Note:* Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

**21 NCAC 14C .0804 ADVISABILITY**

Discretionary intervention will be deemed advisable when:

- (1) The information the petitioner desires to present is relevant and not repetitious or merely cumulative; and
- (2) The petitioner would lend added impact to arguments of the parties.

*History Note:* Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

#### **21 NCAC 14C .0805 WRITTEN MOTION**

A person desiring to intervene in a contested case must file a written motion with the chairman of the Board at the Board's address.

*History Note:* Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989; April 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

#### **21 NCAC 14C .0806 PETITION FOR INTERVENTION**

*History Note:* Authority G.S. 88-23; 150B-23;  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1989.

#### **21 NCAC 14C .0807 ALLOWANCE**

If the Board decides to allow intervention, notification of that decision will be issued promptly to all parties including the movant. In cases of discretionary intervention such notification will include a statement of the limitations, if any, of time, subject matter, evidence or any other matters deemed necessary by the Board which are imposed upon the intervenor.

*History Note:* Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

#### **21 NCAC 14C .0808 DENIAL**

If the Board decides to deny intervention, the movant must be notified promptly in writing. The notification must state the reasons for the decision and must be issued to the movant and to all parties.

*History Note:* Authority G.S. 150B-28;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

### **SECTION .0900 - HEARING OFFICERS**

#### **21 NCAC 14C .0901 HEARING OFFICER**

#### **21 NCAC 14C .0902 CONDUCT**

*History Note:* Authority G.S. 88-23; 150B-25; 150B-33;

*Eff. February 1, 1976;*  
*Repealed Eff. April 1, 1988.*

**21 NCAC 14C .0903      BIAS OF BOARD MEMBER**

If for any reason a board member determines that personal bias or other factors would keep that member from being able to hear a contested case and perform all duties concerning the hearing in an impartial manner, that member shall submit in writing to the Board his or her disqualifications and the reasons therefor.

*History Note:      Authority G.S. 150B-38(h); 150B-40;*  
*Eff. February 1, 1976;*  
*Amended Eff. January 1, 1989; April 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

**21 NCAC 14C .0904      BIAS CLAIMED BY PARTY**

If for any reason any party in a contested case believes that a board member is personally biased or otherwise unable to conduct the hearing and perform all duties in an impartial manner, the party may file with the Board a sworn notarized affidavit stating the reasons for such belief and all relevant facts.

*History Note:      Authority G.S. 150B-38(8); 150B-40;*  
*Eff. February 1, 1976;*  
*Amended Eff. April 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

**21 NCAC 14C .0905      AFFIDAVIT**

*History Note:      Authority G.S. 88-23; 150B-25; 150B-33;*  
*Eff. February 1, 1976;*  
*Repealed Eff. April 1, 1988.*

**21 NCAC 14C .0906      FILING AFFIDAVIT**

An affidavit of disqualification will be considered timely if filed at least ten days prior to the scheduled hearing date. Any other affidavit may be found timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that any board member may be disqualified.

*History Note:      Authority G.S. 150B-38(h); 150B-40;*  
*Eff. February 1, 1976;*  
*Amended Eff. April 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

**21 NCAC 14C .0907      DISQUALIFICATION**

The remainder of the members of the board shall decide whether to disqualify the person being challenged by the following procedural rules:

- (1) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the remaining members of the Board conducting the hearing.
- (2) The Board shall appoint a member of the Board or the executive secretary or any other appropriate person to investigate the allegations of the affidavit, if necessary and report his or her findings or recommendations.
- (3) The Board shall decide whether to disqualify the challenged individual on the basis of all relevant and appropriate information available to it.

*History Note:      Authority G.S. 150B-38(h); 150B-40;*

*Eff. February 1, 1976;*  
*Amended Eff. January 1, 1989; April 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

**21 NCAC 14C .0908 NEW HEARING**

When a board member is disqualified after the hearing has begun, a new hearing must be initiated upon request if any party would be prejudiced by the denial of the request.

*History Note: Authority G.S. 150B-38(h); 150B-40;*  
*Eff. February 1, 1976;*  
*Amended Eff. January 1, 1989; April 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

**21 NCAC 14C .0909 DISQUALIFICATION OF ENTIRE BOARD**

**21 NCAC 14C .0910 DETERMINATION TO CONTINUE**

**21 NCAC 14C .0911 RECORDS**

*History Note: Authority G.S. 88-23; 150B-25; 150B-33; 150B-34;*  
*Eff. February 1, 1976;*  
*Repealed Eff. April 1, 1988.*