

## **SUBCHAPTER 14D - CONDUCT OF THE CONTESTED CASE**

### **SECTION .0100 - FAILURE TO APPEAR**

#### **21 NCAC 14D .0101      PROCEEDING WITHOUT PARTY**

Should a party who has been served with notice fail to appear at a scheduled hearing without having previously been granted a continuance, the Board may either proceed with the hearing in the party's absence, continue the hearing, or dismiss the proceeding.

*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 14D .0102      ALTERNATIVES OF HEARING OFFICER**

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                            Repealed Eff.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

#### **21 NCAC 14D .0103      CONTINUANCES**

A continuance will be granted to a party only in compelling circumstances. Usually only one such postponement will be allowed.

*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 14D .0104      PETITION TO REOPEN**

- (a) If a hearing is conducted and if a decision is reached in the absence of a party, the party may petition the Board for a reopening of the case. Petitions will not be granted except when the petitioners show that the reason for failure to appear was justifiable and unavoidable and that fairness and justice require a reopening of the case.
- (b) All petitions for reopening of the case shall be in writing and addressed to the chairman of the Board at its address, and shall contain the following information:
- (1) the name and address of the petitioner,
  - (2) a full identification of the hearing which the petitioner is seeking to reopen, and
  - (3) a detailed explanation of the reasons for the petitioner's desire to reopen the hearing.

*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 14D .0105      CRITERIA FOR REOPENING A CASE**

The Board shall make a decision on whether to reopen the petitioner's case based upon the merits of the petition or other pertinent information in the Board's possession. A copy of the decision will be sent to the petitioner and made a part of the permanent record of the contested case.

*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.

## SECTION .0200 - PRE-HEARING CONFERENCE

<b>21 NCAC 14D .0201</b>	<b>DISCRETION TO HOLD CONFERENCE</b>
<b>21 NCAC 14D .0202</b>	<b>PURPOSES</b>
<b>21 NCAC 14D .0203</b>	<b>NATURE OF CONFERENCE</b>
<b>21 NCAC 14D .0204</b>	<b>NOTICE OF PRE-HEARING CONFERENCE</b>
<b>21 NCAC 14D .0205</b>	<b>SIMPLIFICATION OF ISSUES</b>

*History Note:* Authority G.S. 88-23; 150B-11(1); 150B-23; 150B-31; 150B-33(5);  
Eff. February 1, 1976;  
Repealed Eff. April 1, 1988.

## SECTION .0300 - SUBPOENAS

### 21 NCAC 14D .0301 AUTHORITY TO ISSUE

*History Note:* Authority G.S. 88-23; 150B-27;  
Eff. February 1, 1976;  
Repealed Eff. April 1, 1988.

### 21 NCAC 14D .0302 ISSUANCE

Subpoenas requiring the attendance of witnesses or those to produce documents, evidence or things must be issued by the chairman of the Board or his agent within three business days of the receipt of a request from a party to a contested case.

*History Note:* Authority G.S. 150B-38(h); 150B-39;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989; August 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

### 21 NCAC 14D .0303 SERVICE OF SUBPOENAS

- (a) Subpoenas may be served in any manner provided by law.
- (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 "Return of Service" form for each copy and promptly return one copy of the subpoena with the attached "Return of Service" form completed to the Board.

*History Note:* Authority G.S. 150B-27;  
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 14D .0304 UNREASONABLE SUBPOENAS

*History Note:* Authority G.S. 88-23; 150B-27;  
Eff. February 1, 1976;  
Repealed Eff. April 1, 1988.

### 21 NCAC 14D .0305 OBJECTIONS

Any person receiving a subpoena may object thereto by filing a written objection with the Board.

*History Note:* Authority G.S. 150B-38(h); 150B-39;

*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 14D .0306 STATEMENT OF REASONS**

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 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 that the evidence is privileged or that 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.

*History Note: Authority G.S. 150B-38(h); 150B-39;*  
*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 14D .0307 SERVICE OF OBJECTIONS**

Any objections to a subpoena filed with the Board must be simultaneously served on the party requesting the subpoena.

*History Note: Authority G.S. 150B-38(h); 150B-39;*  
*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 14D .0308 RESPONSES TO OBJECTIONS**

The party requesting the subpoena, within 10 days, may file a written response to the objection. The response shall be served in like manner as the objection.

*History Note: Authority G.S. 150B-38(h); 150B-39;*  
*Eff. February 1, 1976;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

#### **21 NCAC 14D .0309 HEARINGS ON SUBPOENA CHALLENGES**

After receipt of the objection and a response thereto, if any, the hearing board or the presiding officer shall issue a notice of hearing to the party who requested the subpoena and the party challenging it and may notify all other parties of a hearing before the Board to be scheduled within a reasonable time at which hearing evidence and testimony may be presented by all parties limited to the questions raised by the subpoena, the objection, and subsequent responses thereto.

*History Note: Authority G.S. 88-23; 150B-25; 150B-39;*  
*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 14D .0310 RULINGS**

Promptly after the close of any hearing on an objection to a subpoena, the Board will issue a written decision. Based on the evidence presented and the record, the Board may revoke or modify the subpoena for good cause, based on such issues as oppressiveness, relevancy, and other appropriate factors, or may overrule the objection to the subpoena. A written copy of the decision will be served on the person objecting to the subpoena and all parties to the hearing.

*History Note:* Authority G.S. 150B-38(h); 150B-39;  
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.

#### **SECTION .0400 - DISCOVERY**

**21 NCAC 14D .0401 DISCOVERY OF INFORMATION**  
**21 NCAC 14D .0402 FAILURE TO SUBMIT TO DISCOVERY**

*History Note:* Authority G.S. 88-23; 150B-28;  
Eff. February 1, 1976;  
Repealed Eff. April 1, 1988.

#### **SECTION .0500 - DEPOSITIONS**

**21 NCAC 14D .0501 USE OF DEPOSITIONS**  
**21 NCAC 14D .0502 PROCEDURE FOR TAKING A DEPOSITION**  
**21 NCAC 14D .0503 RULINGS ON DEPOSITIONS**

*History Note:* Authority G.S. 88-23; 150B-28;  
Eff. February 1, 1976;  
Repealed Eff. April 1, 1988.