

**21 NCAC 21 .0903           DISPOSITION OF REQUESTS**

(a) The Board's Chair shall make a determination on the completeness of the request for declaratory ruling based on the requirements of Rule .0902 of this Section, and he or she shall make a recommendation to the Board on whether to issue or decline to issue a declaratory ruling.

(b) Before deciding the merits of the request, the Board may:

- (1) request additional written submissions from petitioner(s);
- (2) request a written response from any other person; or
- (3) hear oral argument upon written request from the petitioner or other persons on the issues raised by the request if the Board determines oral argument would be helpful to its consideration of the request.

(c) No party shall offer testimony or conduct cross-examination before the Board in a declaratory ruling proceeding.

(d) Whenever the Board determines for good cause that the issuance of a declaratory ruling is undesirable, the Board may refuse to issue such ruling. The Board shall notify in writing the person that requested the ruling of the reasons for the refusal to issue a ruling on the request.

(e) For purposes of Paragraph (d) of this Rule, the Board shall determine whether good cause exists by considering factors such as the following:

- (1) whether the facts are in dispute;
- (2) whether there has been a similar determination in a previous contested case or declaratory ruling;
- (3) whether the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (4) whether the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record; and
- (5) whether no genuine controversy exists as to the application of a statute or rule to the specific factual situation presented.

(f) The requesting party may agree to allow the Board to extend the time by which to issue a ruling on the merits of the request pursuant to G.S. 150B-4.

*History Note: Authority G.S. 89E-5; 89E-20; 150B-4;  
Eff. February 1, 1986;  
Amended Eff. April 1, 2003; April 1, 1989;  
Pursuant to G.S. 105B 21.3A, rules is necessary without substantive public interest Eff. December 16, 2014;  
Amended Eff. June 1, 2017.*