

## **21 NCAC 22L .0113 SUBPOENAS**

- (a) A party in a contested case may request a subpoena. The request shall:
- (1) be made in writing to the Board;
  - (2) include a particularized description of any books, papers, records or objects the recipient shall produce pursuant to the subpoena;
  - (3) include the full name and home or business address of the person to be subpoenaed; and
  - (4) include the date, time, and place for responding to the subpoena.
- (b) The Board-designated presiding officer for the contested case shall issue the requested subpoena in duplicate within five days of receipt of the request. A subpoena shall include:
- (1) the caption of the case;
  - (2) the name and address of the person subpoenaed;
  - (3) the date, hour and location to appear;
  - (4) a particularized description of any books, papers, records or objects the recipient shall produce pursuant to the subpoena;
  - (5) the identity of the party requesting the subpoena;
  - (6) the date of issuance of the subpoena;
  - (7) the signature of the presiding officer;
  - (8) a return of service form; and
  - (9) instructions for objecting to the subpoena.
- (c) The party requesting the subpoena shall provide a copy of the issued subpoena to all parties in the contested case at the time the subpoena is served on the recipient.
- (d) A subpoena shall be served in accordance with G.S. 1A-1, Rule 45. The person serving the subpoena shall return one copy of the subpoena with a completed return of service form to the Board.
- (e) The completed return of service form shall provide:
- (1) the name and capacity of the person serving the subpoena;
  - (2) the date on which service was made;
  - (3) the person on whom service was made;
  - (4) the manner in which service was made; and
  - (5) the signature of the person effectuating service.
- (f) A recipient of a subpoena issued by the Board may file a written objection to the subpoena with the presiding officer. The recipient shall serve a copy of the objection on the party requesting the subpoena. The objection may be made on any of the following grounds:
- (1) the subpoena requests evidence not related to a matter at issue;
  - (2) the subpoena does not describe with sufficient particularity the evidence to produce;
  - (3) the subpoena fails to allow reasonable time for compliance;
  - (4) the subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection;
  - (5) the subpoena subjects a person to an undue burden or expense;
  - (6) the subpoena is otherwise unreasonable or oppressive; or
  - (7) the subpoena is procedurally defective.
- (g) The party requesting the subpoena, in such time as may be granted by the Board, may file a written response to the objection with the presiding officer, and shall serve the objecting recipient and all parties with a copy of the written response.
- (h) The presiding officer shall issue a written notice to all parties of an open hearing, scheduled as soon as practicable, during which evidence regarding the objection and response may be presented,
- (i) The presiding officer shall issue a written decision based upon the factors required by G.S. 150B-39(c). A copy of the decision shall be issued to all parties and made a part of the record.

*History Note:* Authority G.S. 1A-2; 93D-3; 150B-38; 150B-39; 150B-40;  
Eff. January 1, 1992;  
Amended Eff. December 1, 2013; March 1, 1996;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.