

26 NCAC 03 .0102 DEFINITIONS AND CONSTRUCTION

(a) The definitions contained in G.S. 150B-2 are incorporated herein by reference. In addition, the following definitions apply:

- (1) "Chief Administrative Law Judge" means the person appointed according to G.S. 7A-752.
- (2) "File" or "Filing" means:
 - (A) to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Office of Administrative Hearings, and acceptance thereof by the clerk, except that when a party submits a document for filing to the administrative law judge during the course of a contested case hearing and the filing is accepted by the administrative law judge, the judge shall note thereon the filing date. All documents filed with the Office of Administrative Hearings, except exhibits, shall be in letter size 8 1/2" by 11"; or
 - (B) electronic filing as defined in 26 NCAC 03 .0501(1).
- (3) "Service" or "Serve" means:
 - (A) delivery by electronic mail with an attached file in a format that is readily accessible to the recipient;
 - (B) delivery by facsimile (fax);
 - (C) personal delivery;
 - (D) delivery by first class United States Postal Service mail;
 - (E) delivery by overnight express mail service; or
 - (F) electronic service as defined in 26 NCAC 03 .0501(4).

(b) A Certificate of Service by the person making the service shall be appended to every document requiring service under these Rules.

(c) Service by mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service.

(d) Service by overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in the custody of an overnight express mail service.

(e) Service by electronic mail or fax shall be deemed to occur one hour after it is sent, provided that:

- (1) documents sent after 5 pm are deemed sent at 8 am the following business day; and
- (2) documents sent by electronic mail or fax that are not readable by the recipient are not deemed served. Within five business days of receipt of an unreadable document, the receiving party shall notify the sending party of the unreadability of the document.

Service by electronic mail or fax is treated the same as service by mail for the purpose of adding three days to the prescribed period to respond under Rule 6(e) of the Rules of Civil Procedure as contained in G.S. 1A-1.

(f) The rules of statutory construction contained in Chapter 12 of the General Statutes shall be applied in the construction of these Rules.

*History Note: Authority G.S. 7A-752; 150B-23; 150B-23.3;
Eff. August 1, 1986;
Amended Eff. October 1, 1991; January 1, 1989; November 1, 1987; September 1, 1986;
Temporary Amendment Eff. January 1, 2012;
Amended Eff. March 1, 2016; November 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*