

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend the rule cited as 26 NCAC 03 .0123.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.oah.nc.gov>

Proposed Effective Date: August 1, 2021

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Send public hearing request via email to Bill Culpepper, NC OAH General Counsel, at bill.culpepper@oah.nc.gov*

Reason for Proposed Action: *NC OAH has eliminated contracting for court reporting and transcriptionist services, thereby permitting attorneys to contract directly with court reporters and transcriptionists that have been approved by the Administrative Office of the Courts. The proposed rule reflects this NC OAH operational change and updates the existing rule to reflect current NC OAH operations, including NC OAH's implementation of an electronic filing and case management system and installation of modern technology equipment in NC OAH courtrooms subsequent to the adoption of the current rule.*

Comments may be submitted to: *Bill Culpepper, General Counsel, Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609; phone (984) 236-1931; fax (984) 236-1871; email bill.culpepper@oah.nc.gov*

Comment period ends: June 14, 2021

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 03 - HEARINGS DIVISION

SECTION .0100 - HEARING PROCEDURES

26 NCAC 03 .0123 OFFICIAL RECORD

- (a) The official record of a contested case shall be available for public inspection upon request. An administrative law judge may, consistent with law, order ~~part or all~~ or part of an official record sealed.
- (b) The official record shall be prepared in accordance with G.S. 150B-37(a).
- (c) Contested case hearings shall be recorded either by a hearing assistant provided by the Office of Administrative Hearings ~~four track recording system~~ or a court reporter authorized and approved to prepare transcripts of proceedings in the General Court of Justice by the Administrative Office of the Courts procured directly by one or more parties to the contested case, using stenomask or stenotype.
- (d) ~~Transcript costs incurred shall be divided equally among the party(ies) requesting a transcript.~~
- (e) ~~Any other costs incurred when using a court reporter shall be divided equally among the requesting party(ies).~~
- (d)(f) If a contested case hearing is cancelled, the party responsible shall provide a 24-hour cancellation notice is required in all cases in which a hearing assistant is provided by the Office of Administrative Hearings, cases. The party(ies) responsible for the cancellation are liable for any cancellation fees.
- (e)(g) Transcripts of proceedings during which oral evidence is presented shall be made only upon request of a party. OAH shall contract with an independent contractor to provide transcript services. When proceedings are recorded by a court reporter, transcript requests shall must be made directly to the court reporter. When proceedings are recorded by a hearing assistant, transcript requests shall be made directly to a transcriptionist authorized and approved to prepare transcripts of proceedings in the General Court of Justice by the Administrative Office of the Courts, independent contractor. The name and phone number of the independent contractor may be obtained by calling the Office of Administrative Hearings. Transcript costs shall be provided to the requesting party by the independent contractor. An attorney requesting a transcript on behalf of a party shall be a guarantor of payment of the cost. The independent contractor may require an advance security deposit to cover the prospective cost.
- (f) A party who orders a transcript shall use an Office of Administrative Hearings Transcript Contract form to order the transcript, which shall include the following information:

- (1) case name and number;
- (2) requestor information; and
- (3) transcriptionist information.

That form is available on the Office of Administrative Hearings website at <https://www.oah.nc.gov> and may be obtained from the Chief Hearings Clerk upon request. The party ordering the transcript shall file the transcript contract with the Office of Administrative Hearings and shall serve the transcript contract on all other parties and the transcriptionist. The transcriptionist shall deliver the transcript to the parties and file the transcript with the Office of Administrative Hearings by email to clerks@oah.nc.gov in PDF format no later than 30 days after having been served with the transcript contract.

~~(g)(h)~~ Copies of recordings made by a hearing assistant are available upon written request at a cost set out in 26 NCAC 01 .0103.

~~(i) Copies of OAH Hearings recordings or non-OAH certified transcripts therefrom are not part of the official record.~~

~~Note: Rule 5.3(B) of the Rules of Professional Conduct permits an attorney to advance or guarantee expenses of litigation provided the client remains ultimately liable for such expenses.~~

*History Note: Authority G.S. 7A-751; 150B-37;
Eff. August 1, 1986;
Amended Eff. August 1, 1998; April 1, 1990; February 1, 1989; November 1, 1987;
September 1, 1986;
Recodified from Rule .0122 Eff. August 1, 2000;
Amended Eff. April 1, 2009;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. August 1, 2021.*