

## 21 NCAC 21 .0603 SUBPOENAS

(a) The Board shall use the following procedure to issue a subpoena pursuant to the authority granted the Board by G.S. 150B-39:

- (1) 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;
- (2) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the Sheriff's service fee;
- (3) In accordance with G.S. 150B-39, the Board may quash any subpoena issued in a case for which the Board is conducting a hearing. Any person receiving a subpoena in such case may object thereto by filing a written objection to the subpoena with the Board by mailing same to the Board office;
- (4) Such objection shall 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 sought, 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, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.
- (5) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.
- (6) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.
- (7) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party who is challenging it, and may notify all other parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response, if any.
- (8) Promptly after the close of such hearing, the Board shall rule on the challenge and issue a written decision. A copy of the decision shall be issued to all parties and made a part of the record.
- (9) Subpoenas shall contain the following:
  - (A) the caption of the case;
  - (B) the name and address of the person subpoenaed;
  - (C) the date, hour and location of the hearing in which the witness is commanded to appear;
  - (D) a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any;
  - (E) the identity of the party on whose application the subpoena was issued, and the date of issue;
  - (F) the signature of the person issuing the subpoena; and
  - (G) a return of service form, fully executed, which shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the location and manner in which service was made, and the signature of the person making service.

(b) Where the Board grants a request for hearing and elects to conduct the evidentiary hearing without referral, subpoenas may be issued by the attorney for any party in accordance with the provisions of G.S. 1A-1, Rule 45. Upon objection by any person receiving a subpoena in such case, the Board may quash the subpoena after following the procedure specified in Part (A) of this Rule.

(c) Where the Board grants a request for hearing and elects to refer the contested case to the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing, the issuance or quashing of subpoenas will be governed by G.S. 150B-27 or other applicable rules of the Office of Administrative Hearings.

*History Note: Authority G.S. 89E-5; 89E-20; 150B-38; 150B-39; 150B-40; Eff. February 1, 1986;*

*Amended Eff. April 1, 2003; April 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*  
*16, 2014.*