

## **21 NCAC 56 .1409 CONDUCT OF CONTESTED CASE**

### **(a) Failure to Appear:**

- (1) If a party served with notice requests a hearing within the time required and fails to appear without having notified the Board, and no continuance or adjournment is ordered, the party is considered to have waived the right to appear at the hearing and the Board may proceed with the hearing in the party's absence.
- (2) If the absent party is the only party other than the Board, the Board may proceed with the hearing and make its decision in the party's absence.
- (3) Continuances and adjournments shall be granted to a party only in compelling circumstances and for hardship noted.
- (4) If a hearing is conducted or a decision reached in the absence of a party, that party may petition the Board for a reopening of the case. Petitions will not be granted, except when petitioner can show that the reasons for the failure to appear were justifiable and that fairness requires reopening of the case. The decision made by the Board will be in writing. A copy will be sent to the petitioner and made a part of the record of the contested case.

(b) Simplification of Issues. The parties to a contested case may agree in advance to simplify the hearing by eliminating issues to be contested at the hearing, accepting the validity of certain proposed evidence, accepting the findings in some other case with relevance to the case at hand, or agreeing to such other matters as may expedite the hearing.

### **(c) Subpoenas:**

- (1) The executive director shall issue subpoenas in the Board's name.
- (2) Subpoenas requiring the attendance of witnesses, or those to produce documents, evidence, or things, will be issued by the executive director within five business days of the receipt of a request from a party to the case for such subpoena.
- (3) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board. Such objection must 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 requested, lack of particularity in the description of the evidence sought, or any other reasons 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 hardships.
- (4) The objecting witness shall serve the objection on the party who requested the subpoena as soon as the objection is filed with the Board.
- (5) The party requesting the subpoena, within five days, may file a written response to the objection. The response shall be served in like manner as the objection.
- (6) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested and the party challenging the subpoena, 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 questions raised by the objection and response, if any.
- (7) Promptly after the close of such hearing, the Board will rule on the challenge and issue a written decision. A copy of this decision will be issued to all parties and made a part of the record.

*History Note: Authority G.S. 89C-10; 89C-21; 89C-22; 150B-38; 150B-39; 150B-40; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 2000; August 1, 1998; April 1, 1989; December 1, 1984; January 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*