

24 NCAC 03 .0511 GENERAL PROCEDURES: DEPOSITIONS IN LIEU OF ORAL TESTIMONY

- (a) A motion to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this Section, hereinafter referred to as "the officer"). Such application shall be filed with the Board or hearing examiner and shall be served on all parties and intervenors not less than 30 days prior to the time when it is desired that the deposition be taken. Any party or intervenor may file a response prior to the ruling of the Board, as provided in Rule .0308 of this Chapter. Where good cause has been shown, the Board or the hearing examiner shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.
- (b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States of the place where the examination is held. If the examination is held in a foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.
- (c) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under the officer's direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer, who shall attach a certificate stating that the witness was duly sworn, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because of illness, death, or because the witness cannot be found, or waives signing, such facts shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver one copy of the transcript, together with certificate, in person or by registered mail, to the Board.
- (d) The Board or hearing examiner shall rule upon the admissibility of the deposition or any part thereof.
- (e) All errors or irregularities in compliance with the provision of this Rule shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.
- (f) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.
- (g) Witness fees and mileage, court reporter fees, and the cost of the original transcript and copy for the Board shall be borne by the party at whose instance the deposition is taken.

*History Note: Authority G.S. 95-135;
 Temporary Rule Eff. October 2, 1991 For a Period of 180 Days to Expire on March 30, 1992;
 Eff. February 3, 1992;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16,
 2014.*