

SUBCHAPTER 03B - RULE-MAKING AND CONTESTED CASES

SECTION .0100 - RULE-MAKING

04 NCAC 03B .0101 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Banking Commission shall address a petition to:

Office of The Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309
Attention: Rule-making Coordinator

(b) The Commissioner of Banks will determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting it. He will consider all the contents of the submitted petition, plus any additional information he deems relevant.

History Note: Authority G.S. 53-92; 150B-20;
Eff. February 1, 1976;
Amended Eff. August 1, 2004; April 1, 1999.

04 NCAC 03B .0102 NOTICE

(a) Any person or agency desiring to be placed on the mailing list for Banking Commission rule-making notices may file a request in writing, furnishing their name and mailing address to:

Office of The Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309
Attention: Rule-making Coordinator

The request must state the subject areas within the authority of the Banking Commission for which notice is requested.

(b) Persons desiring information in addition to that provided in a particular rule-making notice may contact:

Office of The Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309
Attention: Rule-making Coordinator

History Note: Authority G.S. 53-92; 150B-20;
Eff. February 1, 1976;
Amended Eff. August 1, 2004; April 1, 1999; August 1, 1988.

04 NCAC 03B .0103 HEARINGS

(a) Unless otherwise stated in a particular rule-making notice, hearings before the Banking Commission shall be held in Raleigh, North Carolina, at regular scheduled or special called meetings of the Banking Commission.

(b) Any person desiring to present oral data, views, or arguments on the proposed rule must, before the hearing, file a notice with:

Office of The Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.
Attention: Rule-making Coordinator

Any person permitted to make an oral presentation may submit a written copy of the presentation to the above-named person prior to or at the hearing.

(c) A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual wants to speak. Presentations may not exceed 15 minutes unless, upon request, either before or at the hearing, the Commissioner of Banks or the presiding officer determines that fundamental fairness and procedural due process require an extension of time.

(d) Upon receipt of a request to make an oral presentation the Commissioner of Banks shall acknowledge receipt of the request, and inform the person requesting of the imposition of any limitations deemed necessary to the end of a full and effective public hearing on the proposed rule.

(e) Upon receipt of such written comments prompt acknowledgment shall be made including a statement that the comments therein shall be considered fully by the Banking Commission.

(f) The presiding officer at the hearing shall have complete control of the proceedings, including: extensions of any time requirements, recognition of speakers, time allotments for presentations, direction of the flow of the discussion, and the management of the hearing. The presiding officer, at all times, shall take care that each person participating in the hearing is given a fair opportunity to present views, data, and comments.

History Note: Authority G.S. 53-92; 150B-21.2
Eff. February 1, 1976;
Amended Eff. September 1, 2004; April 1, 1999; August 1, 1988.

04 NCAC 03B .0104 TEMPORARY RULES

History Note: Authority G.S. 53-77.3; 53-92; 150B-13;
Eff. February 1, 1976;
Repealed Eff. September 1, 1988.

04 NCAC 03B .0105 DECLARATORY RULINGS

(a) Any person substantially affected by a statute administered or rule promulgated by the Commissioner of Banks or the Banking Commission may request a declaratory ruling as to:

- (1) whether, and if so how, the statute or rule applies to a given factual situation, or
- (2) whether a particular agency rule is valid.

All decisions of the Commissioner of Banks relative to declaratory rulings shall be subject to review by the Banking Commission upon written application of any aggrieved party.

(b) The Commissioner of Banks shall have the sole power to make such declaratory rulings. All requests for declaratory rulings shall be written and mailed to:

Office of The Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.
Attention: Legal Division

(c) All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing.

(d) Whenever the Commissioner of Banks believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the Commissioner of Banks shall notify the petitioner of his decision in writing, stating reasons for the denial of a declaratory ruling.

(e) Where a declaratory ruling is deemed appropriate, the Commissioner of Banks shall issue the ruling within 60 days of receipt of the petition.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

History Note: Authority G.S. 53-92; 150B-17;
Eff. February 1, 1976;
Amended Eff. August 1, 2004.

SECTION .0200 - CONTESTED CASES

04 NCAC 03B .0201 BANKING COMMISSION HEARINGS
04 NCAC 03B .0202 HEARINGS BEFORE THE COMMISSIONER OF BANKS
04 NCAC 03B .0203 REQUEST FOR HEARING

04 NCAC 03B .0204 NOTICE
04 NCAC 03B .0205 WRITTEN ANSWERS TO NOTICE
04 NCAC 03B .0206 REPRESENTATION BY AN ATTORNEY

History Note: Authority G.S. 53-92; 150B-2(2);
Eff. February 1, 1976;
Amended Eff. September 1, 1988;
Repealed Eff. August 1, 2004.

04 NCAC 03B .0207 WAIVER

History Note: Authority G.S. 53-92; 150B-40(a);
Eff. February 1, 1976;
Repealed Eff. August 1, 1988.

04 NCAC 03B .0208 DEPOSITIONS

History Note: Authority G.S. 53-91; 150B-39(a);
Eff. February 1, 1976;
Repealed Eff. August 1, 1988.

04 NCAC 03B .0209 DISCOVERY
04 NCAC 03B .0210 RULES OF EVIDENCE
04 NCAC 03B .0211 PRE-HEARING CONFERENCE
04 NCAC 03B .0212 PLACE AND FORUM FOR CONTESTED CASES
04 NCAC 03B .0213 FAILURE TO APPEAR FOR A CONTESTED CASE
04 NCAC 03B .0214 CONSOLIDATION OF CONTESTED CASES
04 NCAC 03B .0215 INTERVENTION OF A NEW PARTY INTO A CONTESTED CASE
04 NCAC 03B .0216 DISQUALIFICATION OF HEARING OFFICER
04 NCAC 03B .0217 SUBPOENAS
04 NCAC 03B .0218 PUBLIC INSPECTION OF FILES

History Note: Authority G.S. 53-92; 53-99; 53-125; 150B-24; 150B-38; 150B-38(f); 150B-39; 150B-40; 150B-41;
Eff. February 1, 1976;
Amended Eff. August 1, 1998;
Repealed Eff. August 1, 2004.

04 NCAC 03B .0219 DEFINITIONS

As used in this Subchapter:

- (1) "Appellate Panel" means an appellate review panel appointed pursuant to G.S. 53-92(d).
- (2) "Commission" means the North Carolina State Banking Commission
- (3) "Commissioner" means the North Carolina Commissioner of Banks.
- (4) "Court" means a North Carolina District or Superior Court.
- (5) "Day" means a calendar day, other than a Saturday, Sunday or North Carolina state holiday.
- (6) "Hearing officer" means the Commissioner or an individual appointed by the Commissioner pursuant to G.S. 53-93.
- (7) "Rules of Civil Procedure" means the North Carolina Rules of Civil Procedure, G.S. 1A-1, et seq., as the same may be amended from time to time.
- (8) Terms used herein which are defined by G.S. 150B shall be defined as in G.S. 150B.

History Note: Authority G.S. 53-92; 53-93; 150B-38(h);

Eff. August 1, 2004.

04 NCAC 03B .0220 HEARINGS

Whenever the Commissioner is authorized or required by law to hold a hearing, the hearing officer shall conduct the hearing in accordance with the applicable provisions of law, the Rules of Civil Procedure, the Rules of Evidence and the procedures set forth in this Subchapter.

History Note: Authority G.S. 53-92; 53-93; 53-186; 53-208.10; 53-208.23; 53-224.25; 53-228; 53-233.16; 53-243.12; 53-251; 53-271(c); 53-284; 53-321; 53-327; 53-369; 53-370; 53-412; 150B-38(h); Eff. August 1, 2004.

04 NCAC 03B .0221 APPLICATION OF THE RULES OF CIVIL PROCEDURE

Except as otherwise provided in this Subchapter or in G.S. 150B, the Rules of Civil Procedure shall apply in hearings and prehearing proceedings governed by this Subchapter to the same extent as though the hearing or prehearing proceeding was pending in a Court.

History Note: Authority G.S. 53-93; 150B-38(h); Eff. August 1, 2004.

04 NCAC 03B .0222 FILING OF DOCUMENTS

(a) All requests for hearing, written answers, motions, responses to motions or other papers required or permitted to be filed in any contested case shall be signed by the party or the party's attorney and the original thereof filed with the Commissioner addressed as follows:

If filed via the United States Postal Service:

Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, NC 27699-4309
Attn: Legal Division

If filed via a private overnight mail service or via hand delivery:

Office of the Commissioner of Banks
316 W. Edenton Street
Raleigh, NC 27603-1716
Attn: Legal Division

(b) A copy of any papers filed with the Commissioner, together with any attachments, shall be served upon all parties in any manner permitted by the Rules of Civil Procedure.

(c) Any paper required or permitted to be filed pursuant to this Rule shall be considered filed on the date it is actually received at the address above.

History Note: Authority G.S. 53-93; 150B-38(h); Eff. August 1, 2004.

04 NCAC 03B .0223 REQUEST FOR A HEARING

(a) A person aggrieved may request a hearing, which shall be conducted by a hearing officer. The request shall be made in writing, state all statutory or other legal bases for the request, describe the events or circumstances giving rise to the request and shall include a copy of any supporting documents or other papers supporting the request. If applicable, the request may (but need not) include a statement of pertinent legal issues or questions.

(b) If the Commissioner determines that it is appropriate to do so, he may direct his staff to schedule a hearing, notwithstanding the fact that no request for a hearing has been received. In such cases, the Commissioner's direction shall be treated as a request for a hearing.

History Note: Authority G.S. 53-93; 53-208.10(c); 53-208.23; 53-243.12(b); 150B-38(h); Eff. August 1, 2004.

04 NCAC 03B .0224 DATE, TIME AND LOCATION OF HEARING; MOTIONS TO CONTINUE

- (a) The date, time and location of any hearing under this Subchapter shall be set forth in the notice of hearing or other paper which commences the hearing process.
- (b) Any party may move to continue the hearing.
- (c) The hearing officer shall rule on any motion to continue. Unless oral argument is requested by the hearing officer, motions to continue shall be decided based upon the written submissions of the parties.

History Note: Authority G.S. 53-93; 150B-38(h);
Eff. August 1, 2004.

04 NCAC 03B .0225 MOTIONS

- (a) Any party may file any motion which would be permitted under the Rules of Civil Procedure if the contested case was pending in a Court.
- (b) The opposing party may file such response as is permitted by the Rules of Civil Procedure to any such motion within five days of the date that it is filed with the Commissioner.
- (c) The hearing officer shall rule on any such motion. The hearing officer may rule on any motion with or without oral argument. If the hearing officer determines that oral argument is appropriate, he shall notify the parties of the date for such argument. The notice shall indicate whether the argument is to be conducted in person or by conference call.

History Note: Authority G.S. 53-93; 150B-38(h);
Eff. August 1, 2004.

04 NCAC 03B .0226 PRE-HEARING CONFERENCE

- (a) If the hearing officer determines that to do so would aid in the prompt and efficient resolution of any contested case, the hearing officer may order that the parties attend a pre-hearing conference. The notice of the conference shall either be included in the document referred to in Rule .0224(a) of this Section or in a separate written order. The purpose of a pre-hearing conference is to:
 - (1) explore any grounds upon which a contested case may be resolved without the need for a hearing;
 - (2) determine the scope of discovery each party wishes to pursue;
 - (3) exchange exhibits and other evidence;
 - (4) reach stipulations or other agreements; and
 - (5) pursue any other matters which will reduce the cost, save time, simplify the issues to be heard, or otherwise aid in the expeditious disposition of the matters to be addressed by the hearing.
- (b) The pre-hearing conference may be conducted informally between the parties. At the request of either party, the pre-hearing conference may be conducted by a member of the Commissioner's legal staff.

History Note: Authority G.S. 53-93; 150B-38(h); 150B-41(c);
Eff. August 1, 2004.

04 NCAC 03B .0227 HEARINGS

- (a) Prior to the commencement of a hearing, the hearing officer shall rule on any outstanding motions.
- (b) Once a hearing has begun the hearing officer, may adjourn the hearing and reconvene the same at a later time or date.
- (c) Hearings are open to the public, except as to any testimony or other evidence regarding matters made confidential by law.
- (d) Hearings shall be conducted in a manner which conforms to the Rules of Civil Procedure and the Rules of Evidence. The order of evidence shall be determined by the hearing officer.
- (e) Persons permitted to intervene pursuant to the Rules of Civil Procedure shall be permitted to participate in the hearing only to the extent the hearing officer determines is necessary for a full and fair adjudication of the case.

History Note: Authority G.S. 53-92(d); 53-93; 150B-38(h);
Eff. August 1, 2004.

04 NCAC 03B .0228 STIPULATIONS

Parties may by written stipulation agree upon the facts or any portion thereof and their stipulation may be regarded and used as evidence at the hearing. However, the hearing officer shall not be precluded from requiring or allowing the introduction of additional evidence concerning the issues to which the parties have stipulated.

History Note: Authority G.S. 53-93; 150B-38(h);
Eff. August 1, 2004.

SECTION .0300 - APPEALS TO THE STATE BANKING COMMISSION

04 NCAC 03B .0301 APPOINTMENT OF APPELLATE PANEL

In the event the Chairman of the Commission, pursuant to G.S.53-92(d), appoints an Appellate Panel to consider an appeal and make a recommended decision to the State Banking Commission, the Commissioner's staff shall send all parties written notice of that appointment.

History Note: Authority G.S. 53-92(c); 53-92(d); 53-95; 53-107.2(a); 53-115; 53-215; 53-224.30; 53-231; 53-232.17; 53-243.02; 53-252; 53-272; 53-289; 53-350; 53-410; 53-412; 150B-38(h);
Eff. August 1, 2004.

04 NCAC 03B .0302 RECORD ON APPEAL; HEARING DATE; MEMORANDA OF LAW

- (a) The record on appeal shall consist of the official agency record as set forth in G.S. 150B-42.
- (b) The Commissioner's counsel, after consulting with the chair of the Commission or Appellate Panel, shall provide each party with written instructions setting forth the deadlines by which memoranda of law shall be filed by the parties, when the appeal will be considered by the Commission or Appellate Panel, and whether oral argument will be heard.

History Note: Authority G.S. 53-92(c); 53-92(d); 150B-38(h);
Eff. August 1, 2004.

04 NCAC 03B .0303 ORAL ARGUMENT

- (a) The decision to hear oral argument in an appeal to the Commission shall be in the discretion of the Commission or Appellate Panel. If oral argument is permitted, the chair of the Commission or Appellate Panel shall notify the Commissioner, who shall notify all parties and set a date and time for same.
- (b) If oral argument is permitted, each party shall be allowed a maximum of 30 minutes for oral argument, including rebuttal arguments.

History Note: Authority G.S. 53-92; 53-95; 150B-38(h);
Eff. August 1, 2004.

04 NCAC 03B .0304 COMMISSION REVIEW OF APPELLATE PANEL'S RECOMMENDED DECISION

- (a) If an appeal is heard by an Appellate Panel, that Appellate Panel, after reviewing the record on appeal, memoranda of law and hearing oral arguments, if any, shall make a recommended decision to the Commission. The Commission shall, by a vote of the majority of its members present and voting at any regular or special meeting, either affirm, affirm with modifications or reject the recommended decision of the Appellate Panel.
- (b) If the Commission rejects the Appellate Panel's recommended decision, it shall specify the actions the Appellate Panel or the Commissioner shall take with regard to the appeal.
- (c) A decision to affirm or to affirm with modifications shall be considered a "final agency decision" for purposes of G.S.150B-42.

History Note: Authority G.S. 53-92; 53-95; 150B-38(h);
Eff. August 1, 2004.