

21 NCAC 32N .0110 INITIATION OF DISCIPLINARY HEARINGS

(a) The Board shall issue a notice of charges and allegations only upon completion of an investigation, a finding by the Board or a committee of the Board that there exists a factual and legal basis for an action pursuant to any subsection of G.S. 90-14(a), and a pre-charge conference, if one was requested by the licensee.

(b) Disciplinary proceedings shall be initiated and conducted pursuant to G.S. 90-14 through G.S. 90-14.7 and G.S. 150B-38 through G.S. 150B-42.

(c) A pre-hearing conference shall be held not less than seven days before the hearing date unless waived by the Board President or designated presiding officer upon written request by either party. The purpose of the conference will be to simplify the issues to be determined, obtain stipulations in regards to testimony or exhibits, obtain stipulations of agreement on undisputed facts or the application of particular laws, consider the proposed witnesses for each party, identify and exchange documentary evidence intended to be introduced at the hearing, and consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.

(d) The pre-hearing conference shall be conducted in the offices of the Board, unless another site is designated by mutual agreement of all parties. When a face-to-face conference is impractical, the Board President or designated presiding officer may order the pre-hearing conference be conducted by telephone conference.

(e) The pre-hearing conference shall be an informal proceeding and shall be conducted by the Board President or designated presiding officer.

(f) All agreements, stipulations, amendments, or other matters resulting from the pre-hearing conference shall be in writing, signed by the presiding officer, Respondent, or Respondent's counsel, and Board counsel, and introduced into the record at the beginning of the disciplinary hearing.

(g) Motions for a continuance of a hearing shall be granted upon a showing of good cause. In determining whether to grant such motions, the Board shall consider the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina. Motions for a continuance must be in writing and received in the office of the Board no less than 14 calendar days before the hearing date. A motion for a continuance filed less than 14 calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance shall be ruled on by the Board President or designated presiding officer.

(h) The Respondent may challenge on the basis of personal bias or other reason for disqualification the fitness and competency of any Board member to hear and weigh evidence concerning the Respondent. Challenges must be in writing accompanied by affidavit setting forth with specificity the grounds for such challenge and must be filed with the Board President or designated presiding officer at least 14 days before the hearing except for good cause shown. Nothing contained in this Rule shall prevent a Respondent appearing before the Board at a formal hearing from making inquiry of Board members as to their knowledge of and personal bias concerning that person's case and making a motion based upon the responses to those inquiries that a Board member recuse himself or herself or be removed by the Board President or presiding officer.

(i) In any formal proceeding pursuant to G.S. 90-14.1 and G.S. 90-14.2, discovery may be obtained as provided in G.S. 90-8 and 150B-39 by either the Board or the Respondent. Any discovery request by a Respondent to the Board shall be filed with the Chief Executive Officer of the Board. Nothing herein is intended to prohibit a Respondent or Respondent's counsel from issuing subpoenas to the extent that such subpoenas are otherwise permitted by law or rule. The Board may issue subpoenas for the Board or a Respondent in preparation for or in the conduct of a contested case as follows:

- (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery;
- (2) Requests by a Respondent for subpoenas shall be made in writing to the Chief Executive Officer and shall include the following:
 - (A) the full name and home or business address of all persons to be subpoenaed; and
 - (B) the identification, with specificity, of any documents or information being sought;
- (3) Where Respondent makes a request for subpoenas and complies with the requirements in Subparagraph (2) of this Paragraph, the Board shall provide subpoenas promptly;
- (4) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena; and
- (5) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.

(j) All motions, other than motions pursuant to Rules 12(b) and 56 of the North Carolina Rules of Civil Procedure related to a contested case shall be in writing and submitted to the Board at least 14 calendar days before the

hearing. Pre-hearing motions shall be heard at the pre-hearing conference described in Paragraph (c) of this Rule. Motions filed fewer than 14 days before the hearing shall be considered untimely and shall not be considered unless the reason for the motion could not have been ascertained earlier. In such case, the motion shall be considered at the hearing prior to the commencement of testimony. The Board President or designated presiding officer shall hear the motions and any response from the non-moving party and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from the Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.

(k) Dispositive motions made pursuant to Rules 12(b) and 56 of the North Carolina Rules of Civil Procedure shall be filed no later than 14 calendar days before the hearing. Dispositive motions shall be heard, and decided upon, by a quorum of the Board. The Board shall receive the assistance of independent counsel when deciding a dispositive motion.

History Note: Authority G.S. 90-5.1(a)(3); 90-8; 90-14.1; 90-14.2; 90-14.3; 150B-38; 150B-39(c); Eff. February 1, 2012; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016; Amended Eff. July 1, 2019.