

26 NCAC 03 .0122 EVIDENCE

The North Carolina Rules of Evidence as found in Chapter 8C of the General Statutes shall govern in all contested case proceedings, except as provided otherwise in these Rules and G.S. 150B-29.

- (1) The administrative law judge may admit all evidence that has probative value. Irrelevant, incompetent, and immaterial or unduly repetitious evidence shall be excluded. An administrative law judge may, in his discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will:
 - (a) necessitate undue consumption of time; or
 - (b) create substantial danger of undue prejudice or confusion.
- (2) Contemporaneous objections by a party or a party's attorney are not required in the course of a hearing to preserve the right to object to the consideration of evidence by the administrative law judge in reaching a decision or by the court upon judicial review.
- (3) All evidence to be considered in the case, including all records and documents or a true and accurate photocopy, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence incorporated by reference may be admitted only if the materials so incorporated are available for examination by the parties.
- (4) Documentary evidence in the form of copies or excerpts may be received in the discretion of the administrative law judge or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised about the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy instead of the original.
- (5) The administrative law judge may take notice of judicially cognizable facts by entering a statement of the noticed fact and its source into the record. Upon timely request, any party shall be given the opportunity to contest the facts so noticed through submission of evidence and argument.
- (6) A party may call an adverse party or an officer, director, managing agent, or employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate that party by leading questions and contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party. The adverse party may be examined by that party's counsel upon the subject matter of that party's examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

History Note: Authority G.S. 150B-33(b)(4); 150B-29; Eff. August 1, 1986; Amended Eff. November 1, 1987; March 1, 1987; Recodified from Rule .0121 Eff. August 1, 2000; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.