

**PROPOSED AMENDMENTS TO TITLE 98**

**ARTICLE 98-01  
GENERAL ADMINISTRATION**

Chapter  
98-01-01                      Organization of Office of Administrative Hearings

**CHAPTER 98-01-01  
ORGANIZATION OF OFFICE OF ADMINISTRATIVE HEARINGS**

Section  
98-01-01-01                  History  
98-01-01-02                  Application of North Dakota Century Code Chapter 28-32  
98-01-01-03                  Inquiries

Section 98-01-01-03 is amended as follows:

**98-01-01-03. Inquiries.** Any inquires concerning the office of administrative hearings, the uniform rules of administrative procedure for adjudicative proceedings adopted by it, or any of the laws relating to the office of administrative hearings or the uniform rules may be addressed to:

Director  
Office of Administrative Hearings  
~~1707 North Ninth Street~~ 2911 North 14th Street - Suite 303  
Bismarck, ND ~~58501~~ 58503

**History:** Effective January 1, 1992; amended effective August 1, 2004; amended \_\_\_\_\_, 2012.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02

**ARTICLE 98-02**  
**UNIFORM RULES OF ADMINISTRATIVE PROCEDURE FOR**  
**ADJUDICATIVE PROCEEDINGS**

Chapter	
98-02-01	Definitions [Reserved]
98-02-02	Prehearing Procedure
98-02-03	Hearing Procedure
98-02-04	Posthearing Procedure

**CHAPTER 98-02-02**  
**PREHEARING PROCEDURE**

Section	
98-02-02-01	Complaint Against a Specific-Named Respondent [Reserved]
98-02-02-02	Proceedings Other Than a Complaint Against a Specific-Named Respondent [Reserved]
98-02-02-03	Service and Filing
98-02-02-04	Time
98-02-02-05	Appearances and Representation
98-02-02-06	Discovery
98-02-02-07	Subpoenas
98-02-02-08	Motions - Certification of Motions
98-02-02-09	Prehearing Conferences
98-02-02-10	Prehearing Briefs
98-02-02-11	Affidavits Presented by Parties
98-02-02-12	Consolidation
98-02-02-13	Intervention [Reserved]
98-02-02-14	Informal Disposition [Reserved]
98-02-02-15	Disqualification of Hearing Officer
98-02-02-16	Default [Reserved]
98-02-02-17	Request for Auxiliary Aids or Services
98-02-02-18	Withdrawal of Attorneys
<u>98-02-02-19</u>	<u>Electronic Filing and Service</u>

Section 98-02-02-03 is amended as follows:

**98-02-02-03. Service and filing.** All pleadings, notices, written motions, requests, petitions, and briefs relating to a proceeding must be served on all parties and filed with the agency. When a proceeding has been assigned to a hearing officer outside the agency, the agency shall inform the parties of the designated hearing officer's name and address, and filing must be with the designated hearing officer at the address of the hearing officer. Unless otherwise provided by law, filing is complete upon actual receipt by the agency or the hearing

officer, if one outside the agency has been designated, or upon mailing, unless the agency or hearing officer requires actual receipt by a time certain. The date of service is the day when the document is deposited in the United States mail or is delivered in person, the day of facsimile or email transmission, or the date of publication if service by publication is allowed or required, except that the date of service of a document served by certified mail is the date of its delivery, or of its attempted delivery, if refused. When a party has appeared by an attorney or an authorized representative, service must be upon the attorney or the duly authorized representative, unless service upon the party is ordered by the hearing officer. The serving party must be prepared to furnish satisfactory proof of service.

**History:** Effective January 1, 1992; amended effective April 1, 1998; \_\_\_\_\_, 2011.

**General Authority:** NDCC 54-57-05

**Law Implemented:** NDCC 28-32-21, 28-32-31, 54-57-04

Section 98-02-02-04 is amended as follows:

**98-02-02-04. Time.** In computing any period of time under this title, the time begins with the day following the act or event, or default from which the designated period of time begins to run, and includes the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday, in which event it includes the next following day which is not a Saturday, Sunday, or legal holiday. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period of time after service of a document upon the party and the document is served upon the party by mail, other than certified mail, three days must be added to the prescribed period of time. Service by facsimile or email transmission is not service by mail for purposes of computing any period of time under this section.

**History:** Effective January 1, 1992; amended effective April 1, 1998; \_\_\_\_\_, 2011.

**General Authority:** NDCC 54-57-05

**Law Implemented:** NDCC 28-32-21, 28-32-31, 54-57-04, 54-57-05

Section 98-02-02-19 is created as follows:

**98-02-02-19. Electronic Filing and Service.**

**1. Electronic filing.**

- a. Documents may be filed electronically with an agency, if permitted by the agency. If a proceeding has been assigned to a hearing officer outside the agency, documents may be filed electronically with the designated hearing officer, if permitted by the hearing officer or the hearing officer's agency.

- b. A document filed electronically has the same legal effect as a paper document.
  - c. The typed name or facsimile signature on a document filed electronically has the same effect as an original manually affixed signature.
2. **Filing formats.** Documents filed electronically must be submitted by facsimile transmission or by e-mail. E-mailed documents must be in portable document format (.pdf) or in an approved word processing format.
- a. Approved word processing formats for documents filed electronically are those approved by the agency or, if the proceeding has been assigned to a hearing officer outside the agency, those approved by the designated hearing officer or the hearing officer's agency. Permission must be obtained in advance of submission to submit documents in other than an approved word processing format.
  - b. All paragraphs must be numbered in documents filed by email. Reference to material in such documents must be to paragraph number, not page number. All lines on pages in documents filed by electronic means, except cover letters, must be double-spaced.
3. **Time of Filing.**
- a. A document in compliance with the rules and submitted electronically by 11:59 p.m. local time will be considered filed on the date submitted. For purposes of the time of filing, local time means local time for the receiving agency or designated hearing officer.
  - b. Upon receiving a document filed by email, the agency, or the designated hearing officer or the hearing officer's agency, will issue an e-mail confirmation that the document has been received.
  - c. A party filing a document electronically must pay any required filing fee. An agency, or a designated hearing officer or the hearing officer's agency, may waive payment of filing fees for an indigent party.
  - d. A party filing a document electronically must pay a surcharge for internal reproduction of the document by the receiving agency or the designated hearing officer. No surcharge payment is required for documents 20 total pages in length or less. A party electronically filing a document greater than 20 total pages in length must pay a \$.10 per page surcharge for each page of the document. An agency, or a designated hearing

officer or the hearing officer's agency, may waive payment of a surcharge for an indigent party.

- e. A party must pay all required fees and surcharges within five days of submitting a document filed electronically. If all required fees and surcharges are not paid within five days of submission, the document will be returned to the party and the party will be required to file the document again. The document will not be considered filed until proper re-filing occurs.

4. **Electronic Service.**

- a. If a party files a document by electronic means, the party must serve the document by electronic means if the recipient consents to accept documents served electronically. Service by electronic means is not effective if the party making service learns that the attempted service did not reach the intended recipient. If a party files a document by electronic means, that party has consented to service by electronic means by the hearing officer and any other party. Consent to accept documents served electronically may be given by consent for a specific proceeding or consent for all proceedings.
- b. A party may designate a fax number or an e-mail address as their address for the purpose of accepting electronic service.
- c. If a recipient does not consent to accept electronic service of a document, service by another means specified in the rules is required.
- d. For purposes of computation of time, any document electronically served must be treated as if it were mailed on the date of transmission.
- e. If a party files a document by electronic means and the document is confidential, in whole or in part, the document must be filed with an appropriate confidentiality statement.

History: Effective \_\_\_\_\_, 2011.

General Authority: NDCC 54-57-05

Law Implemented: NDCC 28-32-21, 28-32-31, 54-57-04