

Topic:  
EVIDENCE

# ADMINISTRATION OF JUSTICE MEMORANDA

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## PROOF OF CODIFIED STATE REGULATIONS

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Effective February 1, 1976, all State agencies not exempted from the Administrative Procedure Act were required to file with the Attorney General all of their regulations for inclusion in a code of regulations entitled the North Carolina Administrative Code (abbreviated NCAC). The former regulations of all covered agencies were repealed February 1, 1976, but become effective if properly filed with the Attorney General.

G.S. 150A-1, which lists exempted agencies, and G.S. 150A-2 (1), which defines "agency," are set out below:

**§ 150A-1. Scope and policy.** — (a) This Chapter shall apply except to the extent and in the particulars that any statute makes specific provisions to the contrary. The following are specifically exempted from the provisions of this Chapter: the Employment Security Commission; the Industrial Commission; the Occupational Safety and Health Review Board; the Department of Correction; the Commission of Youth Services; and the Utilities Commission. However, Articles 2 and 3 of this Chapter shall not apply to the Department of Transportation in rule-making or administrative hearings as provided for by Chapter 20 of the North Carolina General Statutes or the Department of Revenue.

Article 4 of this Chapter, governing judicial review of final agency decisions, shall apply to the University of North Carolina and its constituent or affiliated boards, agencies, and institutions, but the University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter.

(b) The purpose and intent of this Chapter shall be to establish as nearly as possible a uniform system of administrative procedure for State agencies.

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This publication is issued occasionally by the Institute of Government. An issue is distributed to those of the following groups to whom its subject is of interest: sheriffs, general law enforcement officers, special-purpose law enforcement officers, police attorneys, judges, clerks, district attorneys, public defenders, adult correction officers, juvenile correction personnel, jailers, and criminal justice trainers. The upper left-hand corner lists those to whom this issue was distributed and indicates a topic heading for this issue, to be used in filing. Comments, suggestions for future issues, and additions or changes to the mailing lists should be sent to: Editor, Administration of Justice Memoranda, Institute of Government, P.O. Box 990, Chapel Hill, N.C. 27514.

§ 150A-2. Definitions. — As used in this Chapter,

- (1) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina but does not include those agencies in the legislative or judicial branches of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or county or city boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly.

For your convenience I am attaching a copy of Article 5 of the Administrative Procedure Act and three implementing regulations issued by the Attorney General concerning availability of copies of regulations to the public (12 NCAC 2G .0103 through 2G .0105).

Judicial Notice of Regulations Filed with Attorney General

Perhaps the most important statute among those attached is G.S. 150A-64, requiring courts to take judicial notice of rules filed with the Attorney General. It is my understanding that it will be quite some time before the Attorney General's office will be able to publish all the rules filed with it; distribution of the reference copies prescribed in G.S. 150A-63, therefore, will be delayed.

Until copies of the North Carolina Administrative Code are generally distributed, problems may arise in securing a reliable text of a regulation on the basis of which a judge could reasonably take judicial notice. The general rule is stated in 1 D. Stansbury, North Carolina Evidence § 11, at 24-25 (Brandis rev. 1973):

A fact will be judicially noticed if it is either so notoriously true as not to be the subject of reasonable dispute, or is capable of demonstration by resort to readily accessible sources of indisputable accuracy. The judge may acquire the necessary information from any source which appears reliable, but he is not required to make an independent search; counsel should supply him with appropriate data. It is immaterial whether or not the judge has personal knowledge of the fact of which he is asked to take judicial notice.

Using any source he deems reliable, the judge should establish (1) that a particular agency has filed the relevant regulation with the Attorney General and (2) that he has obtained the correct and accurate text of the regulation in effect on the day in issue.

Many agencies will undoubtedly distribute to their employees copies of their codified and filed agency regulations; thus, if an agency employee involved as a witness in a case brings to court the text of regulations distributed by the agency, the judge should have no hesitancy in using this copy of the regulations. He must, of course, satisfy himself that the text of any applicable regulation in the employee's set was in fact still in effect on the day pertinent to the case, but most agency employees will know (or will be able reliably to determine from their superiors) whether there have been any amendments or repeals of the regulations since they were issued to him.

Even if no employee is involved, or if an employee is unable to furnish a copy of the regulations, the agency nevertheless may have distributed a copy of the regulations as authorized in G.S. 150A-62 (c). If a copy is available, the judge need only assure himself that the text of the particular regulation was effective on the day in question. Verification of this point by telephone with the officials of the agency or the Attorney General's office would, in my opinion, be sufficient.

If a published text is not available, it may be necessary to contact someone from the agency or to get a copy of the regulation from the Attorney General's office under the provisions of 12 NCAC 2G .0103. (If someone from the agency is locally available, securing a copy from that source may be easier than going through the Attorney General's office in Raleigh.) If the persons from the agency locally available are unable to assure the judge as to the text and official filing of any regulation as of a particular date, then it may be safest for the judge to obtain the certification from the Attorney General's office. See 12 NCAC 2G .0105. (Regulations 2G .0103 and 2G .0105, read together, seem to indicate that the Attorney General will charge ten cents per page for each regulation furnished by mail, but any accompanying certification will be free.)

If the delay of waiting for a mailed certification will halt trial proceedings, it may be wise to inquire by telephone as to the text of a regulation. Regulation 12 NCAC 2G .0103 indicates that telephone orders for copies of regulations will be accepted. Calls should be made to Mr. David Crump or Mr. David Hershman in Raleigh, A/C 919 829-4723. If the regulation is short, and the judge makes the request, I should think the personnel in the Attorney General's office would immediately look up the pertinent text and read it over the telephone. As a matter of caution, the judge may wish to write down (or have the clerk write down) the text read to him for preservation in the record.

All of this is written in the belief that the fact of filing of the regulation or the substance of the text in effect on a certain day will rarely be disputed. If there is a dispute, of course, the judge might wish to protect himself and verify the matter of filing and accuracy of text. The head of an agency would be able to satisfy the judge on this score, as the Attorney General's office will return a form to each agency certifying the acceptance of a submitted text for filing. Agency heads can certify copies of papers kept by them under G.S. 8-34 and G.S. 8-35, though such certification is needed only when the document is being introduced in evidence. Where the object is to inform the judge so that he may take judicial notice, the certification is not legally necessary. Getting the certified text from the Attorney General's office, of course, is the most cautious method of verifying the matter of filing and correctness of text, but is also not legally necessary.

GENERAL STATUTES OF NORTH CAROLINA

Chapter 150A.

Administrative Procedure Act.

\* \* \*

ARTICLE 5.

*Publication of Administrative Rules.*

§ 150A-58. **Short title and definition.** — (a) This Article may be cited as "The Registration of State Administrative Rules Act."

(b) As used in this Article, "rule" means every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency and shall include rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

"Rule" shall not include:

- (1) Rules, procedures, or regulations which relate only to the internal management of any agency;
- (2) Directives or advisory opinions to any specifically named person or group with no general applicability throughout the State;
- (3) Dispositions of any specific issue or matter by the process of adjudication; and
- (4) Orders establishing or fixing rates or tariffs.

§ 150A-59. **Filing of rules.** — (a) Rules adopted by any agency on or after February 1, 1976, shall be filed with the Attorney General. All rules shall become effective 30 days after filing, unless the agency shall certify the existence of good cause for, and shall specify, an earlier or later effective date. The certification shall state the agency's finding and reasons. An earlier effective date shall not precede the date of filing.

(b) The acceptance for filing of a rule by the Attorney General, by his notation on the face thereof, shall constitute prima facie evidence of compliance with this Article.

(c) Rules previously in existence shall be ineffective after January 31, 1976, except that they shall immediately become effective upon filing in accordance with the provisions of this Article.

§ 150A-60. **Form of rules.** — In order to be acceptable for filing, the rule must:

- (1) Cite the statute or other authority pursuant to which the rule is adopted;
- (2) Bear a certification by the agency of its adoption;
- (3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements; and
- (4) Be in the physical form specified by the Attorney General.

§ 150A-61. **Authority of Attorney General to revise form.** — The Attorney General shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

- (1) To rearrange the order of rules, chapters, subchapters, articles, sections, paragraphs, and other divisions or subdivisions;
- (2) To provide or revise titles or catchlines;
- (3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;
- (4) To rearrange definitions and lists; and
- (5) To make other changes in arrangement or in form that in the opinion of the Attorney General do not alter the substance of the rule and that the Attorney General determines are necessary or desirable for an accurate, clear, and orderly arrangement of rules.

Revision of form by the Attorney General shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency.

**§ 150A-62. Public inspection and notification of current and replaced rules.** — (a) Immediately upon notation of a filing as specified in G.S. 150A-59(b), the Attorney General shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150A-61.

(b) The Attorney General shall make copies of current and prior rules, filed in accordance with the provisions of this Article, available to the public at a cost to be determined by him.

(c) Within 25 days of the acceptance by the Attorney General of a rule for filing, the agency filing the rule:

- (1) Shall publish the rule as prescribed in any applicable statute; and
- (2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule. The rule so published or distributed shall contain the legend: "The form of this rule may be revised by the Attorney General pursuant to the provisions of G.S. 150A-61."

(d) The Attorney General is authorized to prepare and distribute summaries of rules filed pursuant to this Article in a manner selected by him as best calculated to give notice to the public.

**§ 150A-63. Publication of rules.** — (a) The Attorney General shall compile, index, and publish all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the Attorney General determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after February 1, 1976, the Attorney General shall publish a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually, or more frequently in the discretion of the Attorney General. Recompilations shall be made in the discretion of the Attorney General.

(e) Copies of the compilation, supplements, and recompilations shall be distributed by the Attorney General as soon after publication as practicable, without charge, to the following officials and departments, in the following quantities:

- (1) One copy to each clerk of the superior court, to be maintained in the county law library in counties having a county law library, or in the clerk's office available for public inspection in counties having no county law library; one copy to each judge of the district and superior courts; one copy to the Chief Judge and each associate justice of the North Carolina Supreme Court; one copy to the Chief Judge and each associate judge of the North Carolina Court of Appeals; one copy each to the Clerk of the Supreme Court and the Clerk of the Court of Appeals; one copy to each district attorney; one copy to the United States Circuit Court of Appeals, Fourth Circuit; one copy to each Judge of Federal District Court who resides in North Carolina; one copy to the Supreme Court of the United States; and one copy to the United States Department of Justice.
- (2) Fifteen copies to the officer of the Legislative Services Commission of North Carolina to be made available by him to the members of the General Assembly.
- (3) As requested by each major department created by the Executive Organization Acts of 1971 and 1973, the office of the Governor, Lieutenant Governor, and the Board of Governors of the University, to a limit of 20 copies each. Distribution and maintenance shall be determined by the requesting official or department. Requests shall be limited to need determined by the Attorney General based upon information supplied to him by the requesting official or department.
- (4) Four copies each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals.

(f) The Attorney General shall make available copies of the compilation, and of all supplements, to other persons at a price determined by him to cover publication and mailing costs.

**§ 150A-64. Judicial and official notice.** — The courts and administrative agencies shall take judicial or official notice, respectively, of any rule effective under this Article.

NORTH CAROLINA ADMINISTRATIVE CODE

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TITLE 12

RULES AND REGULATIONS

OF THE

DEPARTMENT OF JUSTICE

\* \* \*

SUBCHAPTER 2G - ADMINISTRATIVE PROCEDURES  
RULES FOR FILING

SECTION .0100 - GENERAL PROVISIONS

\* \* \*

.0103 PUBLIC INSPECTION AND DISTRIBUTION OF REGULATIONS

(a) All regulations filed with the Attorney General's Office in compliance with the Administrative Procedure Act will be made available for public inspection in the administrative procedures section during normal working hours, 8:30 a.m. to 5:00 p.m., Monday through Friday.

(b) Copies of regulations will be made available by mail or telephone request at ten cents (\$.10) per page. Requests for copies of rules should identify the desired rules as specifically as possible, giving the correct citation to the North Carolina Administrative Code if known, and should specify the number of copies desired.

(c) Copies of rules requested by mail or telephone will be sent to the requesting party with an invoice which provides the citation of the rules requested, the number of pages, the charge per page and the total charge.

(d) When a request for a copy of a rule or regulation is made in person by the requesting person, the regulation to be copied is three or fewer pages long, and the requesting party picks up the requested copy, no charge will be made for the copy provided.

History Note: Statutory Authority G.S. 150A-59, -62;  
Eff. February 1, 1976.

.0104 SPECIAL PROVISIONS ON REQUEST

Upon request, the Attorney General may make special provisions, for the form, procedure or location for filing regulations, amendments, and repeal of regulations. The requesting agency must demonstrate to the Attorney General's satisfaction that there are compelling circumstances justifying such special provisions.

History Note: Statutory Authority G.S. 150A-60;  
Eff. February 1, 1976.

**.0105 CERTIFIED COPIES OF VALID RULES**

Upon request, the Attorney General will provide copies of rules filed with the administrative procedures section and a copy of a form certifying that the attached writing is a valid copy of rules properly filed, and accepted by the Attorney General's Office. The form will identify the rules by their official citation in the North Carolina Administrative Code codification system and will bear the Attorney General's signature or that of his designate, the date the rules became effective, the date they were superseded by amendment or repeal properly filed if applicable and the date of certification.

History Note: Statutory Authority G.S. 150A-59(b), -64;  
Eff. February 1, 1976.

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