

## **Local Rules for the North Carolina Real Estate Commission**

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### **Rule 1.0: Purpose of the Rules**

- 1.1 The Purpose of these rules is to provide for the just, orderly, and prompt consideration, determination and disposition of matters to be heard before the North Carolina Real Estate Commission. They shall at all times be construed and enforced by the Commission in the interests of justice and to avoid unnecessary delay. These rules are not complete in every detail and will not cover every situation. In the event the rules do not cover a specific situation, the Commission Chair or his/her assignee may determine the course of action.
- 1.2 Any attorney representing a party before the Commission must notify the Commission in writing of such representation immediately after being retained by the party. Such notice shall constitute an appearance on behalf of the party as their attorney of record in the matter.

### **Rule 2.0: Calendaring and Notice to Attorneys**

- 2.1 **Disciplinary Case Calendar Call.** There shall be a calendar call of the cases on the calendar by the Director of Regulatory Affairs or designee at 9:00 a.m. on the day of disciplinary hearings. Cases will normally be called for hearing in the order they appear on the calendar, but the order may be adjusted by the Commission Chair or his/her assignee as needed in the interests of justice and to accommodate the Commission Members, attorneys and unrepresented parties. All parties should be prepared for their case to be called at any time.
- 2.2 **Commission Appearance.** The Commission issues and serves Notices of Hearings upon parties and their attorney of record, if any, in the time required by law. Such Notices or subsequent Orders of Continuance or Calendar Orders identify the date and time matters are set to be heard before the Commission and constitute notice to any attorney engaged by a party for representation either before or after the issuance of the Notice. When any matter is scheduled before the Commission, the attorney must, consistent with ethical requirements, appear or have a partner, associate, or another attorney familiar with the case appear. Unless an attorney has been excused in advance by the Commission Chair or his/her assignee, an attorney's failure to appear may not be grounds for continuance.
- 2.3 **Preemptory Settings.** The Commission may preemptorily set a case for hearing on a date when it is believed the potential length of the hearing or parties involved warrants a special setting. In such cases, Commission staff shall attempt to serve the Notice of Hearing more than 15 days in advance of the hearing and shall notify the other party of the preemptory setting and that the Commission will not grant a continuance from that date except for extraordinary circumstances.

### **Rule 3.0: Motions**

- 3.1 **Motions to Withdraw as Attorney of Record.**

An attorney retained to represent a client in a proceeding before the Commission shall not withdraw from such representation without first filing a motion to withdraw with the Commission. Motions to withdraw must include a certificate of service showing service on the client from whom representation is being withdrawn.

### 3.2 **Motions to Continue**

(a) **Generally.** Attorneys, and/or unrepresented parties, must provide notice of a motion to continue. Motions to continue are considered filed when received by the Commission's attorney assigned to the case and the moving attorney or unrepresented party has verified receipt. Motions to continue shall be decided by the Commission Chair or his/her assignee and must be granted in order to remove a matter from the scheduled hearing calendar after a Notice of Hearing has been issued. Motions to continue a case set for hearing are generally disfavored and will not be granted absent good cause shown.

(b) **Content.** Any motion to continue must be in writing and contain the following information:

- (1) File number of the case;
- (2) Session at which the case is set;
- (3) The basis for the motion;
- (4) The number of times the case has previously been continued by the party requesting the continuance;
- (5) A certification that the moving party conferred, or attempted in good faith to confer, with all parties before filing the motion, and a statement of whether the motion is opposed; and
- (6) A proposed session within 60 days for the rescheduling of the case. The Executive Director shall reset the case in consultation with the Director of Regulatory Affairs.

(c) **Timing.** A motion to continue must be filed with the Commission no later than 5 p.m. on the Monday prior to the scheduled hearing. Motions to continue filed thereafter will not be considered until the calling of the calendar, except where the motion reflects extreme hardship or extraordinary circumstances as determined by the Commission Chair or his/her assignee. Parties who are moving to continue a case set for hearing should be prepared to move forward with a hearing in the event the motion is denied. Motions to continue shall be denied if not made in such time as to be able to cancel witnesses traveling overnight or by air except in cases of extreme hardship or extraordinary circumstances as determined by the Commission Chair or his/her assignee. Prior to a scheduled hearing, only the Chair of the Commission or his/her assignee may rule on a motion to continue a case set for trial.

3.3 **Cases not reached.** If a case is not reached for hearing, counsel and/or unrepresented parties may submit a request for an agreed-upon date for rescheduling to the Director of

Regulatory Affairs no later than the close of business one week after the hearing date on which the case was originally set. If counsel and unrepresented parties fail to submit such an agreed-upon date, the case shall be reset by the Executive Director in consultation with the Director of Regulatory Affairs.

#### **Rule 4.0: Discovery**

##### **4.1 General Provisions.**

(a) **Cooperation.** Attorneys have a professional responsibility to deal with each other and opposing parties fairly and in full compliance with the letter and spirit of the Rules of Civil Procedure, the Rules of Professional Conduct, and the General Rules of Practice.

(b) **Proportionality.** Parties are expected to use reasonable, good faith and proportional efforts to preserve, identify and produce relevant information.

(c) **Preservation of Discoverable Information.** Parties have an obligation to take reasonable and proportional steps to preserve potentially responsive information within their possession, custody, or control.

(d) **Electronic Service.** Parties may agree to electronically serve or accept service of requested or required documents. Unless the parties agree or the Commission Chair orders otherwise, service of an electronically transmitted document(s) sent after 5 p.m. shall be deemed sent at 8:30 a.m. the following day. If the parties agree to electronic service, then the sender must make reasonable efforts to document or confirm delivery and/or receipt.

4.2 **Discovery Motions and Objections.** The Commission Chair or his/her assignee will not consider motions and objections to discovery unless the moving party files a certificate that, after personal consultation and diligent attempts to resolve differences, the parties are unable to reach an accord. The certificate shall set forth the dates of the conferences, the names of the participants, and the specific results achieved. The filed certificate must be attached to any request to calendar a discovery dispute and sent to the Chair of the Commission at the Commission's office.

#### **Rule 5.0: Pre-Hearing Matters**

5.1 **Stipulations or other pre-hearing documents.** Fully executed stipulations or other documents are due to the Director of Regulatory Affairs no later than 5 p.m. three business days prior to the scheduled hearing. In addition to pre-hearing stipulations, a list of the witnesses expected to be called during the hearing and a list of exhibits, including copies, intended to be presented at the hearing shall be exchanged by the attorneys by 5 p.m. on the Monday prior to the scheduled hearing. Should an attorney attempt to admit into evidence any exhibit not provided in accordance with this section other than for purposes of rebuttal, upon objection by the opposing party, the Commission Chair or his/her assignee may consider this fact in their decision on the motion.

- 5.2 **Exhibits.** Exhibits shall be pre-marked with appropriate stickers with sequential numbers. A list of all exhibits in sequential order shall be provided to the hearing clerk at the beginning of the hearing.
- 5.3 **Witnesses.** Witnesses shall present a valid government issued form of identification which includes their legal name and a photograph (i.e. Driver License) to the court reporter prior to the start of the hearing.

**Rule 6.0: Requests for Transcript of Hearing**

- 6.1 Upon written request by an unrepresented party or attorney, Commission staff shall provide a non-certified copy of a Transcript of Hearing within a reasonable time after receiving the request. If Commission staff has not yet received the Transcript of Hearing from the court reporting company at the time of the request by the unrepresented party or attorney, then the Commission staff shall provide a non-certified copy within a reasonable time after receiving the Transcript of Hearing. Should an unrepresented party or attorney wish to receive a certified copy of a Transcript of Hearing, they shall request this directly from the court reporting company.

This the 13<sup>th</sup> day of February 2019.

  
Anna Gregory Wagoner, Chair