



# *NC Property Insurance Rate Making Appeals*

*Committee on Regulatory and Rate Issues in Insurance*

*Legislative Research Commission*

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## *NC Property Insurance Rate Making Appeals Process*

1. If the Rate Bureau elects to appeal the COI's Order to the Court of Appeals, it must file a Notice of Appeal with the COI within 30 days after the COI issues his Order
  - (G.S. 58-2-80)
  
2. Pending appeal, the COI's Order is stayed (*does not take effect until after the appeal is resolved*)
  - (G.S. 58-2-85(10))

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3. The Rate Bureau decides which issues from the COI's Order that it will appeal
  - In 2014 HO Hearing, the Rate Bureau appealed the following issues:
    - profit, hurricane model, reinsurance costs, and allocation to zone

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4. Once an appeal is filed with the Court of Appeals both parties have an opportunity to:
    - a) File a written brief on the issues, and
    - b) Make oral arguments to the Court (a three judge panel selected randomly) if ordered by the court
- Written briefs are limited to 35 pages
  - Oral arguments are limited to 30 minutes for each party
  - *In 2014 HO, the Court of Appeals felt the issues to be significant enough that it allowed written briefs to extend to 50 pages and oral arguments to extend to 45 minutes for each party*

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5. After the oral arguments, the Court deliberates and issues a decision
  - The Court may:
    - Affirm or reverse the COI's Order
    - Declare the Order to be null and void, or
    - Remand to the COI for further proceedings (G.S. 58-2-90(b))
  - The Rate Bureau must include in the filing all testimony, exhibits and other information upon which it will rely at a hearing (G.S. 58-36-15(i))

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6. In making its determination, the Court looks at the whole record of the case as filed by the Rate Bureau (with concurrence by COI)
  - The Court of Appeals does not retry the case (G.S. 58-2-90(c))

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7. On appeal, the COI's Order is considered to be prima facie correct (G.S. 58-2-90(e))
  - The COI's Order is presumed to be correct and proper if supported by substantial evidence. (G.S. 58-2-80)
  - It is for the COI to determine:
    - Weight and sufficiency of the evidence
    - Credibility of the witnesses
    - to draw inferences from the facts, and
    - to appraise conflicting and circumstantial evidence
    - *State ex rel. Comm'r v. Rate Bureau*, 300 N.C. 381

- *Note:* It may appear that the deck is stacked against the Rate Bureau on appeal, however:
  - *COI has the burden of proof* in showing that disapproval of the Rate Bureau's filing is supported by ***substantial evidence***
  - If COI fails to fulfill his burden of proof, the presumption of prima facie correctness is rebutted
    - *State ex rel Comm'r v. N.C. Rate Bureau, 40 N.C. App. 85.*
  - Majority of existing case law from prior appeals of COI orders
    - Court found in favor of industry



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8. Court of Appeals will vacate order and approve NCRB filing if it finds COI's Order is:
  - Not based on substantial evidence, &
  - Not in compliance with statutory standards and methods

*State ex rel. Comm'r v. Rate Bureau, 40 N.C. App. 85.*

2014 HO case – Court of Appeals issued **unanimous decision affirming the COI's Order in its entirety**

## *NC Property Insurance Rate Making Appeals Process*

9. After Court of Appeals decision, either party can appeal to the North Carolina Supreme Court
10. The Supreme Court has discretion to decide to hear case or not
  - Unlike Court of Appeals

## *NC Property Insurance Rate Making Appeals Process*

11. If Supreme Court doesn't take case, Court of Appeals decision stands and case is over
12. If Supreme Court takes the case, there will again be briefs and oral arguments
  - The Supreme Court will issue a decision which will be a final decision in the case that will have precedential value