

NOTICE OF PROPOSED INDUSTRIAL COMMISSION RULEMAKING

AUGUST 15, 2018

Notice is hereby given in accordance with G.S. 150B-21.2 that the Industrial Commission intends to amend the rules cited as 11 NCAC 23A .0101-.0103, .0108, .0302, .0411, .0503, .0602, .0603, .0608, .0609A-.0611, and repeal the rule cited as 11 NCAC 23A .0618.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) is available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ic.nc.gov/proposed11NCAC23AGroup1Rules.html>

Proposed Effective Date: December 1, 2018

Oral comments on the proposed rule amendments and repeal may be made at the Public Hearing before the Industrial Commission:

Date: September 26, 2018

Time: 2:00 p.m.

Location: Room 245, 2nd Floor, Department of Insurance, Albemarle Building, 325 North Salisbury Street, Raleigh, NC 27603

Written comments on the proposed rule amendments and repeal may be submitted to: Ashley B. Snyder, 1233 Mail Service Center, Raleigh, NC 27699-1233; phone (919) 807-2524; email Ashley.snyder@ic.nc.gov

Comment period ends: October 15, 2018

Reason for Proposed Action: *On its own initiative, the Industrial Commission ("Commission") conducted an internal review of its rules and sought informal stakeholder feedback. The proposed amendments reflect changes the Commission felt were necessary to clarify the rules, provide for increased efficiency, or update the rules to reflect current practices.*

The Industrial Commission proposes to repeal Rule 11 NCAC 23A .0618 because it is unnecessary. Pursuant to G.S. 97-78.1 the Code of Judicial Conduct applies to Commissioners and Deputy Commissioners. Since the Code of Judicial Conduct governs disqualifications and recusals, the rule is repetitive.

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected** 11 NCAC 23A .0108, .0302, .0609A
- Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
- Local funds affected** 11 NCAC 23A .0108, .0302, .0609A
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4** 11 NCAC 23A .0101-.0103, .0411, .0503, .0602, .0603, .0608, .0610, .0611, .0618

CHAPTER 23 - INDUSTRIAL COMMISSION

SUBCHAPTER 23A - WORKERS' COMPENSATION RULES

SECTION .0100 - ADMINISTRATION

11 NCAC 23A .0101 LOCATION OF MAIN OFFICE AND HOURS OF BUSINESS

The main office of the North Carolina Industrial Commission is located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that ~~are not being filed electronically~~ may be filed via hand-delivery in accordance with Rule .0108 of this Section may be filed at the main office between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

*History Note: Authority G.S. 97-80(a);
Eff. January 1, 1990;*

*Amended Eff. *****; January 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000;
Recodified from 04 NCAC 10A .0101 Eff. June 1, 2018.*

11 NCAC 23A .0102 OFFICIAL FORMS

(a) Copies of the Commission's rules and forms may be obtained by contacting the Commission in person at the address in Rule .0101 of this ~~Subchapter, Section,~~ by written request mailed to North Carolina Industrial Commission, 4340 1236 Mail Service Center, Raleigh, NC 27699-4340, 27699-1236, Attn.: Administrator, Office of the Clerk, or from the Commission's website at <http://www.ic.nc.gov/abtrules.html> and <http://www.ic.nc.gov/forms.html>.

(b) Insurance carriers, self-insured employers, ~~attorneys~~ attorneys, and other parties may reproduce current Commission forms for their own use, provided:

- (1) no statement, question, or information blank contained on the Commission form is omitted from the substituted form; and
- (2) the substituted form is identical in size and format ~~with~~ to the Commission form.

*History Note: Authority G.S. 97-80(a); 97-81(a);
Eff. January 1, 1990;
Amended Eff. *****; November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0102 Eff. June 1, 2018.*

11 NCAC 23A .0103 NOTICE OF ACCIDENT AND CLAIM OF INJURY OR OCCUPATIONAL DISEASE

To give notice of an accident or occupational disease and to make a ~~workers~~ workers' compensation claim, an employee may complete a Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent and file it in accordance with Rule .0108 of this Section, electronically with Claims Administration, or by mail to North Carolina Industrial Commission, 4335 Mail Service Center, Raleigh, NC 26799-4335.

*History Note: Authority G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81;
Eff. January 1, 1990;
Amended Eff. *****; November 1, 2014;
Recodified from 04 NCAC 10A .0131 Eff. June 1, 2018.*

11 NCAC 23A .0108 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

(a) All documents filed with the Commission in workers' compensation cases shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Any document filed with the Commission that requires contemporaneous payment of a processing fee pursuant to Rule 11 NCAC 23E .0203 shall not be deemed filed until the fee has been paid in full. The electronic filing requirements of this Rule shall not apply to ~~claimants,~~ employees, medical providers, or non-insured employers without legal representation. ~~Claimants, Employees,~~ medical providers, and non-insured employers without legal representation may file all documents with the Commission via the Commission's Electronic Document Filing Portal ("EDFP"), electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) Except as set forth in Paragraphs (d) and (e) of this Rule, all documents shall be transmitted to the Commission via EDFP. Information regarding how to register for and use EDFP is available at <http://www.ic.nc.gov/training.html>. In the event EDFP is inoperable, all documents required to be filed via EDFP shall be transmitted to the Commission via electronic mail to edfp@ic.nc.gov. Documents required to be filed via EDFP that are sent to the Commission via electronic mail when EDFP is operable shall not be accepted for filing.

(c) Transcripts of depositions shall be filed with the Commission pursuant to this Rule by the court reporting service. ~~The transcripts~~ Transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The parties shall provide the Commission's court reporting service with the information necessary to effectuate filing of the deposition transcripts and attached exhibits via EDFP. If an exhibit to a deposition is in a form that makes submission of an electronic copy impracticable, counsel for the party offering the exhibit shall make arrangements with the Commission to facilitate the submission of the exhibit. Condensed transcripts and paper copies of deposition transcripts shall not be accepted for filing.

(d) A Form 19 shall be filed as the first report of injury (FROI) via electronic data interchange (EDI), except in claims involving non-insured employers or in claims for lung disease, in which case the Form 19 shall be filed electronically to forms@ic.nc.gov, by mail to 1235 Mail Service Center, Raleigh, North Carolina 27699-1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule. ~~in accordance with Paragraph (e) of this Rule.~~ Information regarding how to register for and use EDI is available at www.ncicedi.info.

(e) The workers' compensation forms and documents listed in Table 1 shall not be required to be transmitted via EDFP provided all applicable qualifying conditions are met.

Table 1: Forms and documents exempt from EDFP filing requirements and how to file them:

DOCUMENT	QUALIFYING CONDITION(S)	HOW TO FILE
Form 18	No IC file number has been assigned	Electronically to forms@ic.nc.gov , by mail to 4335 <u>1235</u> Mail Service Center, Raleigh, North Carolina 27699-4335, 27699-1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule

Form 18B	Always exempt from EDPF filing requirement	Electronically to forms@ic.nc.gov, by mail to 4335 1235 Mail Service Center, Raleigh, North Carolina 27699-4335, 27699-1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 19	1. The claim involves a non-insured employer; or 2. The claim is for lung disease.	Electronically to forms@ic.nc.gov, by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 51	Always exempt from EDPF filing requirement	Electronically to forms@ic.nc.gov
Plaintiff's Attorney Representation Letter	No IC file number has been assigned	Electronically to forms@ic.nc.gov
Medical motions, responses, and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter	Always exempt from EDPF filing requirement	Electronically to medicalmotions@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Compliance & Fraud Investigative Division	Always exempt from EDPF filing requirement	Electronically to fraudcomplaints@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Medical Fees Section	Always exempt from EDPF filing requirement	Electronically to medicalfees@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Safety Education & Training Section	Always exempt from EDPF filing requirement	Electronically to safety@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
A Form 25N to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to 25N@ic.nc.gov
Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to rehab.referrals@ic.nc.gov

(f) A self-insured employer, carrier or guaranty association, third-party administrator, court reporting service, or law firm may apply to the Commission for an emergency temporary waiver of the electronic filing requirement set forth in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.

(g) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDPF or U.S. Mail.

*History Note: Authority G.S. 97-80; 97-81;
Eff. February 1, 2016;
Amended Eff. _____, ____; February 1, 2017;
Recodified from 04 NCAC 10A .0108 Eff. June 1, 2018.*

SECTION .0300 - INSURANCE

11 NCAC 23A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS

All insurance carriers, third party administrators ~~administrators~~, and self-insured employers shall designate a primary contact person for workers' compensation issues in North Carolina and shall maintain and provide annually on July 1 to the Director of Claims Administration of the ~~Commission~~, Commission via email at rule302@ic.nc.gov, the primary contact person's current contact

information, including direct telephone and facsimile numbers, mailing addresses, and email addresses. Contact information shall be updated within 30 days of any change.

History Note: Authority G.S. 97-80(a); 97-94;
Eff. January 1, 2011;
Amended Eff. ***** **, *****: November 1, 2014;
Recodified from 04 NCAC 10A .0302 Eff. June 1, 2018.

SECTION .0400 – DISABILITY, COMPENSATION, FEES

11 NCAC 23A .0411 SAFETY RULES

The process for the Commission to approve safety rules or regulations adopted by an employer as set forth in G.S. 97-12 is as follows:

- (1) The rules shall comply with the general provisions of the safety rules outlined by the American National Standards Institute and the Occupational Safety and Health Act. These standards can be purchased at <http://ansi.org/> and accessed free of charge at <https://www.osha.gov/law-regs.html>, respectively.
- (2) The rules shall be filed by the employer in writing with the Commission ~~Commission's Safety Education Director by mailing them to 4339 Mail Service Center, Raleigh, NC 27699-4339 or e-mailing them to safety@ic.nc.gov.~~ in accordance with Rule .0108 of this Subchapter.
- (3) The rules shall be reviewed by the ~~Safety Education Director of the~~ Commission or the Commission's designee and approved if they are found to be in compliance with Item (1) of this Rule. The Commission shall return to the employer a copy of the rules bearing a certificate of approval from the Commission indicating that the rules have been approved by the Commission pursuant to G.S. 97-12. An employer may revise and resubmit the rules if not approved by the ~~Safety Education Director of the~~ Commission.

History Note: Authority G.S. 97-12; 97-80(a);
Eff. November 1, 2014;
Amended Eff. _____;
Recodified from 04 NCAC 10A .0411 Eff. June 1, 2018.

SECTION .0500 – AGREEMENTS

11 NCAC 23A .0503 NOTICE OF LAST PAYMENT FILING REQUIREMENT

The ~~forms~~ form(s) required to be provided by G.S. 97-18(h) include are (1) Form 28B Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical Compensation, ~~Compensation that requires a statement as to the last date of compensation~~, and (2) Form 28C Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid Pursuant to a Compromise Settlement Agreement, ~~Agreement that requires a statement as to the final payment of compensation~~.

History Note: Authority G.S. 97-18(h); 97-80(a);
Eff. January 1, 1990;
Amended Eff. ***** **, *****: November 1, 2014;
Recodified from 04 NCAC 10A .0503 Eff. June 1, 2018.

SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES

11 NCAC 23A .0602 REQUEST FOR HEARING

(a) Contested claims shall be set on the hearing docket only upon the written request of one of the parties for a hearing or rehearing of the case in dispute. Any request for hearing shall contain the following:

- (1) the basis of the disagreement between the parties, including a statement of the issues raised by the requesting party;
- (2) the date of injury;
- (3) the part of the body injured;
- (4) the city and county where the injury occurred;
- (5) the names and addresses of all doctors and other expert witnesses whose testimony is needed by the requesting party;
- (6) the names of all lay witnesses to be called to testify for the requesting party;
- (7) an estimate of the time required for the hearing of the case; and
- (8) the telephone number(s), email address(es), and mailing address(es) of the party(ies) requesting the hearing and their legal counsel.

(b) A Form 33 Request that Claim be Assigned for Hearing, completed in full, shall constitute compliance with this Rule. The request for a hearing shall be filed with the ~~Docket Section of the Commission~~. Office of the Clerk in accordance with Rule .0108 of this Subchapter. A copy of the Request for Hearing Form 33 Request that Claim be Assigned for Hearing shall be forwarded to the attorneys for all opposing parties, or to the opposing parties themselves, if unrepresented.

History Note: Authority G.S. 97-80(a); 97-83;
Eff. January 1, 1990;
Amended Eff. ***** **, *****: November 1, 2014; June 1, 2000;

11 NCAC 23A .0603 RESPONDING TO A PARTY'S REQUEST FOR HEARING

- (a) No later than 45 days from receipt of a request for hearing from a party, the opposing party or parties shall file with the Commission a response to the request for hearing.
- (b) The response shall contain the following:
- (1) the basis of the disagreement between the parties, including a statement of the issues raised by the moving party that are conceded and the issues raised by the moving party that are denied;
 - (2) the date of the injury, if it is contended to be different than that alleged by the moving party;
 - (3) the part of the body injured, if it is contended to be different than that alleged by the moving party;
 - (4) the city and county where the injury occurred, if they are contended to be different than that alleged by the moving party;
 - (5) an estimate of the time required for the hearing of the case; and
 - (6) the telephone number(s), email address(es), and mailing address(es) of the party or parties responding to the request for hearing and their legal counsel.
- (c) A Form 33R Response to Request that Claim be Assigned for Hearing, completed in full and filed with the ~~Docket Section~~ Office of the Clerk of the Commission, in accordance with Rule .0108 of this Subchapter, shall constitute compliance with this Rule. A copy of the Form 33R Response to Request that Claim be Assigned for Hearing shall be forwarded to the attorneys for all opposing parties or the opposing parties themselves, if unrepresented.

History Note: Authority G.S. 97-80(a); 97-83;
Eff. January 1, 1990;
Amended Eff. ***** **, *****; November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0603 Eff. June 1, 2018.

11 NCAC 23A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM

- (a) Upon the request of the employer or ~~his or her~~ the employer's agent to take a written or a recorded statement, the employer or ~~his~~ the employer's agent shall advise the employee that the statement may be used to determine whether the claim will be paid or denied. Any ~~plaintiff~~ employee who gives his or her employer, ~~it's~~ the employer's carrier, or any agent of the employer either a written or recorded statement of the facts and circumstances surrounding his or her injury shall be furnished a copy of the statement within 45 days after a request by the employee. Further, any ~~plaintiff~~ employee who shall give a written or recorded statement of the facts and circumstances surrounding his or her injury shall, without request, be furnished a copy ~~no less than~~ of the statement within 45 days ~~from~~ after the filing of a Form 33 Request that Claim be Assigned for Hearing. The copy shall be furnished at the expense of the person, ~~firm~~ firm, or corporation at whose direction the statement was taken.
- (b) If any person, ~~firm~~ firm, or corporation unreasonably fails to comply with this Rule, then an order may be entered by a Commissioner or Deputy Commissioner prohibiting that person, ~~firm~~ firm, or corporation, or its representative, from introducing the statement into evidence or using any part of the statement.

History Note: Authority G.S. 97-80(a);
Eff. January 1, 1990;
Amended Eff. ***** **, *****; November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0608 Eff. June 1, 2018.

11 NCAC 23A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS

- (a) Medical motions brought pursuant to G.S. 97-25 and responses thereto shall be brought before either the Office of the Chief Deputy Commissioner or the Executive Secretary and shall be submitted ~~electronically to medicalmotions@ic.nc.gov~~, in accordance with Rule .0108 of this Subchapter. ~~For parties to whom the electronic filing requirements of Rule .0108(b) of this Subchapter apply, Motions, motions, responses, and notices of appeal and responses shall be submitted under the EDPF category "Medical Motions and Responses."~~ The submitting party shall contemporaneously serve a copy of the filing to the Commission and the opposing party or opposing party's counsel, if represented.
- ~~(b) Following receipt of a notice of hearing before a Deputy Commissioner on a medical motion or appeal, the parties shall submit all subsequent filings and communications electronically directly to the Deputy Commissioner assigned.~~
- ~~(c)~~ (b) In addition to any notice of representation contained in a medical motion or response, an attorney who is retained by a party to prosecute or defend a medical motion or appeal before the Commission shall file a notice of representation in accordance with Rule .0108 of this Subchapter and send a copy of the notice to all other counsel and all unrepresented parties involved in the proceeding.
- ~~(c)~~ (c) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall contain the following:
- (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25 and a statement directly underneath the case caption clearly indicating the request is for either an administrative ruling by the Executive Secretary or an expedited full evidentiary hearing before a Deputy Commissioner;
 - (2) ~~the employee's name. If the employee is unrepresented, the employee's telephone number and, if available, the employee's email address and fax number. If the employee is represented, the name, email address, telephone number, and fax number of employee's counsel;~~
 - (3) ~~the employer's name and employer code;~~
 - (4) ~~the carrier or third party administrator's name, carrier code, telephone number, fax number, and, to the extent available, email address;~~

- ~~(5)~~ the adjuster's name, email address, telephone number, and fax number if counsel for the employer and carrier has not been retained;
 - ~~(6)~~ if an attorney has been retained for the employer or carrier, the attorney's name, email address, telephone number, and fax number;
 - ~~(7)~~(2) a statement of the treatment or relief requested;
 - ~~(8)~~(3) a statement of the medical diagnosis of the employee and the name of any health care provider having made a diagnosis or treatment recommendation that is the basis for the motion;
 - ~~(9)~~(4) a statement as to whether the claim has been admitted on a Form 60, Employer's Admission of Employee's Right to Compensation, Form 63, Notice to Employee of Payment of Compensation without Prejudice (G.S. 97-18(d)) or Payment of Medical Benefits Only without Prejudice (G.S. 97-2(19) & 97-25), Form 21, Agreement for Compensation for Disability, or is subject to a prior Commission Opinion and Award or Order finding compensability, with supporting documentation attached;
 - ~~(10)~~(5) a statement of the time-sensitive nature of the request, if any;
 - ~~(11)~~(6) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiners, and second opinion examiners;
 - ~~(12)~~(7) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether the employee has made a prior written request to the defendants for the examination, as well as the date of the request and the date of the denial, if any;
 - ~~(13)~~(8) a representation that informal means of resolving the issue have been attempted in good faith, and a statement of the opposing party's position, if known; and position or that there has been a reasonable attempt to contact the opposing party and ascertain its position; and
 - ~~(14)~~(9) a proposed Order in Microsoft Word ~~format.~~ format, in accordance with Rule .0609 of this Section.
- ~~(e)~~(d) Motions submitted pursuant to G.S. 97-25 and requesting emergency medical relief shall contain the following:
- (1) a boldface or otherwise emphasized designation as "Emergency Medical Motion";
 - (2) ~~the employee's name. If if the employee is unrepresented, the employee's telephone number and, if available, the employee's email address and fax number. If the employee is represented, the name, email address, telephone number, and fax number of the employee's counsel; number;~~
 - (3) ~~the employer's name and employer code, if known;~~
 - (4) ~~the carrier or third party administrator's name, carrier code, telephone number, fax number, and, if available, email address;~~
 - ~~(5)~~(3) the adjuster's name, email address, telephone number, and fax number if counsel for the employer/carrier has not been retained;
 - ~~(6)~~ ~~the counsel for employer/carrier's name, email address, telephone number, and fax number;~~
 - ~~(7)~~(4) an explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention;
 - ~~(8)~~(5) a statement of the need for a shortened time period for review, including relevant dates and the potential for adverse consequences if the recommended relief is not provided emergently;
 - ~~(9)~~(6) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiner, and second opinion examiners;
 - ~~(10)~~(7) a representation that informal means of resolving the issue have been attempted in good faith, and a statement of the opposing party's position, if known; position or that there has been a reasonable attempt to contact the opposing party and ascertain its position;
 - ~~(11)~~(8) documents known and in the possession of the movant relevant to the request, including relevant medical records; and
 - ~~(12)~~(9) a proposed Order in Microsoft Word ~~format.~~ format, in accordance with Rule .0609 of this Section.
- ~~(f)~~(e) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of any time allowed for response and whether informal telephonic oral argument is necessary.
- ~~(g)~~(f) A party may appeal an Order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of this Subchapter by filing notice of appeal ~~electronically to medicalmotions@ic.nc.gov in accordance with Rule .0108 of this Subchapter~~ within 15 calendar days of receipt of the Order. Notices of appeal shall be submitted via EDPF under the category "Medical Motions and Responses." A letter or motion expressing an intent to appeal a decision of the Executive Secretary shall be considered a request for an expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter or motion shall specifically identify the Order from which the appeal is taken and shall indicate that the appeal is from an administrative Order by the Executive Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of appeal, the appeal shall be assigned to a Deputy Commissioner and an Order under the name of the Deputy Commissioner to which the appeal is assigned shall be issued within five days of receipt of the notice of appeal.
- ~~(h)~~(g) Depositions, if requested by the parties or ordered by the Deputy Commissioner, shall be taken in accordance with Rule .0612 of this Section and on the Deputy Commissioner's order pursuant to G.S. 97-25. In full evidentiary hearings conducted by a Deputy Commissioner pursuant to G.S. 97-25(f)(1) and (f)(2), depositions shall be completed and all transcripts, briefs, and proposed Opinion and Awards filed with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter within 60 days of the filing of the motion or appeal. The Deputy Commissioner may reduce or enlarge the timeframe contained in this Paragraph for good cause shown or upon agreement of the parties.
- ~~(i)~~(h) A party may appeal the decision of a Deputy Commissioner filed pursuant to G.S. 97-25(f)(2) by filing notice of appeal to the Full Commission within 15 calendar days of receipt of the decision in accordance with Rule .0108 of this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's decision filed pursuant to G.S. 97-25 shall be considered notice of appeal to the Full Commission, provided that the letter specifically identifies the decision from which appeal is taken and indicates that the appeal is taken

from a decision by a Deputy Commissioner pursuant to G.S. 97-25(f)(2). After receipt of notice of appeal, the appeal shall be acknowledged by the Commission within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The Order shall set the schedule for filing briefs. A Full Commission hearing on an appeal of a medical motion filed pursuant to G.S. 97-25 shall be held telephonically and shall not be recorded unless unusual circumstances arise and the Commission so orders. All correspondence, briefs, and motions related to the appeal shall be addressed to the Chair of the Panel ~~with a copy to his or her law clerk~~ and shall be filed in accordance with Rule .0108 of this Subchapter.

~~(j)(i)~~ (i) A party may appeal the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee filed pursuant to G.S. 97-25(f)(3) by filing notice of appeal electronically to medicalmotions@ic.nc.gov in accordance with Rule .0108 of this Subchapter within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal the Chief Deputy Commissioner's or the Chief Deputy Commissioner's designee's Order filed pursuant to G.S. 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies the Order from which appeal is taken and indicates that the appeal is from an Order of a Deputy Commissioner entered pursuant to G.S. 97-25(f)(3). After receipt of notice of appeal, the appeal shall be acknowledged within five days by sending an Order under the name of the Deputy Commissioner to whom the appeal is assigned. The appeal of the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee shall be subject to G.S. 97-25(f)(2) and G.S. 97-84.

~~(k) Claimants and employers without legal representation are not required to file documents via electronic transmission and may file documents with the Commission via EDPF, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.~~

History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77;
Eff. January 1, 2011;
Amended Eff. *****, **, *****; February 1, 2016; November 1, 2014;
Recodified from 04 NCAC 10A .0609A Eff. June 1, 2018.

11 NCAC 23A .0610 PRE-TRIAL AGREEMENT

(a) A Pre-Trial Agreement shall be signed by the attorneys and filed with the Commission in accordance with Rule .0108 of this Subchapter 10 days before the hearing, unless a shorter time period is ordered upon agreement of the parties.

(b) The Pre-Trial Agreement shall be prepared in a form that conforms to the Order on Final Pre-Trial Conference adopted in the North Carolina Rules of Practice for the Superior and District Courts. Should the parties fail to comply with a Pre-Trial Order, the Commissioner or Deputy Commissioner shall remove the case from the hearing docket if required in the interests of justice or to promote judicial economy. Should the parties ~~thereafter~~ comply with the Pre-Trial Order after the removal of the case, the Pre-Trial Agreement shall be directed to the Commissioner or Deputy Commissioner who removed the case from the docket and filed in accordance with Rule .0108 of this Subchapter. The Commissioner or Deputy Commissioner shall order the case returned to the hearing docket as if a Request for Hearing had been filed on the date of the Order to return the case to the hearing docket. No new Form 33 Request that Claim be Assigned for Hearing is required.

(c) If the parties need a conference, a Commissioner or Deputy Commissioner shall order the parties to participate in a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate, including conference telephone calls.

(d) Any party may request a pre-trial conference to aid in settling the case or resolving contested issues prior to trial. Requests for such pre-trial conferences shall be directed to the Commissioner or Deputy Commissioner before whom the claim has been calendared.

History Note: Authority G.S. 97-80(a); 97-80(b); 97-83;
Eff. January 1, 1990;
Amended Eff. *****, **, *****; February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000; March 15, 1995;
Recodified from 04 NCAC 10A .0610 Eff. June 1, 2018.

11 NCAC 23A .0611 HEARINGS BEFORE THE COMMISSION

(a) The Commission may, on its own motion, order a hearing or rehearing of any case in dispute. The Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the Commission.

(b) In setting contested cases for hearing, cases in which the payment of workers' compensation benefits is at issue take precedence.

(c) The Commission shall give notice of hearings in every case. Postponement or continuance of a duly scheduled hearing shall be allowed only in the discretion of a Commissioner or Deputy Commissioner before whom the case is set if required in the interests of justice or to promote judicial economy. ~~Where~~ When a party has not notified the Commission of the attorney representing the party prior to the mailing of calendars for hearing, notice to that party constitutes notice to the party's attorney.

(d) In a contested case, the record includes all prior Opinion and Awards, filed Commission forms, form agreements, awards, and orders of the Commission. Any other documents that the parties wish to have included in the record shall be introduced and received into evidence.

~~(e) Hearing costs shall be assessed in each case set for hearing, including those cases that are settled after being calendared and notices mailed, and shall be payable upon receipt of a statement from the Commission.~~

~~(f)(e)~~ (e) In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or delayed if the proceedings before the General Court of Justice in that county are cancelled or delayed.

History Note: Authority G.S. 97-79; 97-80(a); 97-84; 97-91;
Eff. January 1, 1990;
Amended Eff. *****, **, *****; November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0611 Eff. June 1, 2018.

11 NCAC 23A .0618 DISQUALIFICATION OF A COMMISSIONER OR DEPUTY COMMISSIONER

History Note: *Authority G.S. 97-79(b); 97-80(a);*
 Eff. November 1, 2014;
 Recodified from 04 NCAC 10A .0618 Eff. June 1, 2018.