

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

SEPTEMBER 26, 2018

PUBLIC HEARING BEFORE THE FULL COMMISSION

REGARDING

THIRTEEN PROPOSED AMENDMENTS AND ONE REPEAL IN

SUBCHAPTER 11 NCAC 23A

GRAHAM ERLACHER & ASSOCIATES  
3504 VEST MILL ROAD - SUITE 22  
WINSTON-SALEM, NORTH CAROLINA 27103  
336/768-1152

A P P E A R A N C E S

COMMISSIONERS:

Charlton L. Allen, Chairman  
Yolanda K. Stith, Vice-Chairman  
Philip A. Baddour, III, Commissioner  
Christopher C. Loutit, Commissioner  
Myra L. Griffin, Commissioner  
A. Robinson Hassell, Commissioner

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Ashley Snyder . . . . .	2

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	<u>IDENTIFIED</u>	<u>ADMITTED</u>
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(Snyder) Exhibit Number 2 . . . . .	3	6

P R O C E E D I N G S

1  
2 CHAIRMAN ALLEN: Good afternoon. We are on the  
3 record. Today is September 26, 2018. I am Charlton  
4 Allen, Chairman of the North Carolina Industrial  
5 Commission. In compliance with the requirements of  
6 Chapter 138A-15(e) of the State Government Ethics Act,  
7 I remind all members of the Commission of their duty  
8 to avoid conflicts of interest under Chapter 138A. I  
9 also inquire as to whether there is any known conflict  
10 of interest to the matters coming before the  
11 Commission at this time. Hearing none, we will  
12 proceed. This is a North Carolina Industrial  
13 Commission public hearing on proposed rulemaking. The  
14 purpose of this hearing is to receive comments from  
15 the public regarding the proposed amendments of  
16 thirteen rules and the proposed repeal of one rule as  
17 published in the *North Carolina Register* on August 15,  
18 2018. We have received no written comments from the  
19 public thus far, and the record will be held open to  
20 receive written comments from the public through the  
21 close of business on October 15, 2018. At this time,  
22 I would like to introduce the other Commissioners. To  
23 my right is Vice-Chairman Yolanda Stith, Commissioner  
24 Philip Baddour and Commissioner Robby Hassell, and to  
25 my left is Commissioner Loutit - Christopher Loutit

1 and Commissioner Myra Griffin. Anyone who wishes to  
2 speak at this hearing must sign up to do so with  
3 Ashley Snyder so that we have the correct spelling of  
4 your name and can call you in order to speak.

5 Ms. Snyder, if you would raise your hand so everyone  
6 will know where you are. If anybody would like to  
7 speak and has not yet signed up, please do so now.  
8 Seeing none, the first speaker will be Ashley Snyder,  
9 rulemaking coordinator; followed by the members of the  
10 public in the order that they have signed up, if any.

11 ASHLEY SNYDER

12 CHAIRMAN ALLEN: Good afternoon.

13 MS. SNYDER: Good afternoon.

14 CHAIRMAN ALLEN: Will you please state your name,  
15 position and whom you work for?

16 MS. SNYDER: My name is Ashley Snyder, and I'm the  
17 rulemaking coordinator for the North Carolina  
18 Industrial Commission.

19 CHAIRMAN ALLEN: And do you have any prepared  
20 exhibits that you would like to place into the record  
21 of these proceedings?

22 MS. SNYDER: Yes. I have Exhibit 1, which is a  
23 copy of the proposed rules as published in the *North*  
24 *Carolina Register* on August 15<sup>th</sup>, 2018. Next, I have  
25 Exhibit 2, which is a copy of the fiscal note for

1 Rules 11 NCAC 23A .0108, .0302 and .0609A.

2 (Exhibits 1 and 2 are identified  
3 for the record.)

4 CHAIRMAN ALLEN: Would you briefly give us some  
5 background and list the rules that will be affected by  
6 the proposed rulemaking?

7 MS. SNYDER: Yes. We have thirteen rules for  
8 amendment and one repeal which have a proposed  
9 effective date of December 1<sup>st</sup>, 2018. On its own  
10 initiative, the North Carolina Industrial Commission  
11 conducted an internal review of its rules and sought  
12 informal stakeholder feedback. The proposed  
13 amendments reflect changes the Commission felt were  
14 necessary to improve and clarify the rules, provide  
15 for increased efficiency, or update the rules to  
16 reflect current practices. The thirteen proposed  
17 rules for amendment are 11 NCAC 23A .0101, Location of  
18 Main Office and Hours of Business; 11 NCAC 23A .0102,  
19 Official Forms; 11 NCAC 23A .0103, Notice of Accident  
20 and Claim of Injury or Occupational Disease; 11 NCAC  
21 23A .0108, Electronic Filings with the Commission; How  
22 to file; 11 NCAC 23A .0302, Required Contact  
23 Information from Carriers; 11 NCAC 23A .0411, Safety  
24 Rules; 11 NCAC 23A .0503, Notice of Last Payment  
25 Filing Requirement; 11 NCAC 23A .0602, Request for

1       Hearing; 11 NCAC 23A .0603, Responding to a Party's  
2       Request for Hearing; 11 NCAC 23A .0608, Statement of  
3       Incident Leading to Claim; 11 NCAC 23A .0609A, Medical  
4       Motions and Emergency Medical Motions; 11 NCAC 23A  
5       .0610, Pre-Trial Agreement, and 11 NCAC 23A .0611,  
6       Hearings Before the Commission. We also have one  
7       proposed rule for repeal: 11 NCAC 23A .0618,  
8       Disqualification of a Commissioner or Deputy  
9       Commissioner. The Industrial Commission proposes to  
10      repeal Rule 11 NCAC 23A .0618 because it is  
11      unnecessary. Pursuant to General Statute 97-78.1, the  
12      Code of Judicial Conduct applies to Commissioners and  
13      Deputy Commissioners. Since the Code of Judicial  
14      Conduct governs disqualifications and recusals, the  
15      rule is repetitive and potentially inconsistent with  
16      the Code of Judicial Conduct.

17           CHAIRMAN ALLEN: Thank you.

18           MS. SNYDER: The Commission has followed the  
19      permanent rulemaking procedures of the Administrative  
20      Procedure Act in proposing these changes. The  
21      proposed rules were filed with a notice of text to the  
22      Office of Administrative Hearings on July 25, 2018.  
23      They were then published in the August 15<sup>th</sup>, 2018 issue  
24      of the *North Carolina Register*, and on the same date,  
25      the Commission published a notice of this rulemaking

1 on the Commission's website and also emailed notice  
2 with a link to these proposed rules to the Industrial  
3 Commission's Listserv. Copies of the rules were also  
4 provided to the North Carolina League of  
5 Municipalities and the North Carolina Association of  
6 County Commissioners as required by statute.

7 CHAIRMAN ALLEN: Do any members of the Commission  
8 have any questions for Ms. Snyder?

9 VICE-CHAIRMAN STITH: No.

10 COMMISSIONER HASSELL: None, Mr. Chairman.

11 COMMISSIONER GRIFFIN: No.

12 CHAIRMAN ALLEN: Very well. Thank you.

13 (SPEAKER DISMISSED)

14 CHAIRMAN ALLEN: I will give members of the public  
15 one last opportunity to sign up to make any statements  
16 or comments to the Commission. All right. There  
17 being no other individuals to speak before the  
18 Commission, I will thank everyone for their  
19 participation in this public hearing. The period of  
20 written comments will be held open through the close  
21 of business on October 15, 2018, so if you have  
22 further comments, please send them to Ashley Snyder as  
23 directed in the hearing notice in the *North Carolina*  
24 *Register* and on the Commission website. I would  
25 strongly encourage anyone intending to submit a

1 written, public comment to do so at your earliest  
2 convenience. The written comments and the comments  
3 made at the hearing today will be made a part of the  
4 public record of these proceedings. We would like to  
5 include in the transcript of this proceeding the  
6 materials submitted by Ashley Snyder as Exhibit 1 and  
7 Exhibit 2.

8 (Exhibits 1 and 2 are admitted  
9 into evidence.)

10 CHAIRMAN ALLEN: Are there any further matters to  
11 come before the public hearing?

12 VICE-CHAIRMAN STITH: No.

13 COMMISSIONER HASSELL: None.

14 COMMISSIONER GRIFFIN: No.

15 CHAIRMAN ALLEN: Okay. Hearing none, the meeting  
16 stands adjourned. Thank you very much. And we will  
17 go off the record.

18 (WHEREUPON, THE HEARING WAS ADJOURNED.)

19 RECORDED BY MACHINE

20 TRANSCRIBED BY: Lisa D. Dollar, Graham Erlacher and  
21 Associates



1 STATE OF NORTH CAROLINA

2 COUNTY OF GUILFORD

3 C E R T I F I C A T E

4 I, Kelly K. Patterson, Notary Public, in and for the  
5 State of North Carolina, County of Guilford, do hereby  
6 certify that the foregoing six (6) pages prepared under my  
7 supervision are a true and accurate transcription of the  
8 testimony of this trial which was recorded by Graham  
9 Erlacher & Associates.

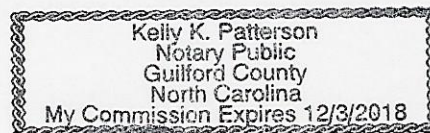
10 I further certify that I have no financial interest in  
11 the outcome of this action. Nor am I a relative, employee,  
12 attorney or counsel for any of the parties.

13 WITNESS my Hand and Seal on this 3<sup>rd</sup> day of October  
14 2018.

15 My commission expires on December 3, 2018.

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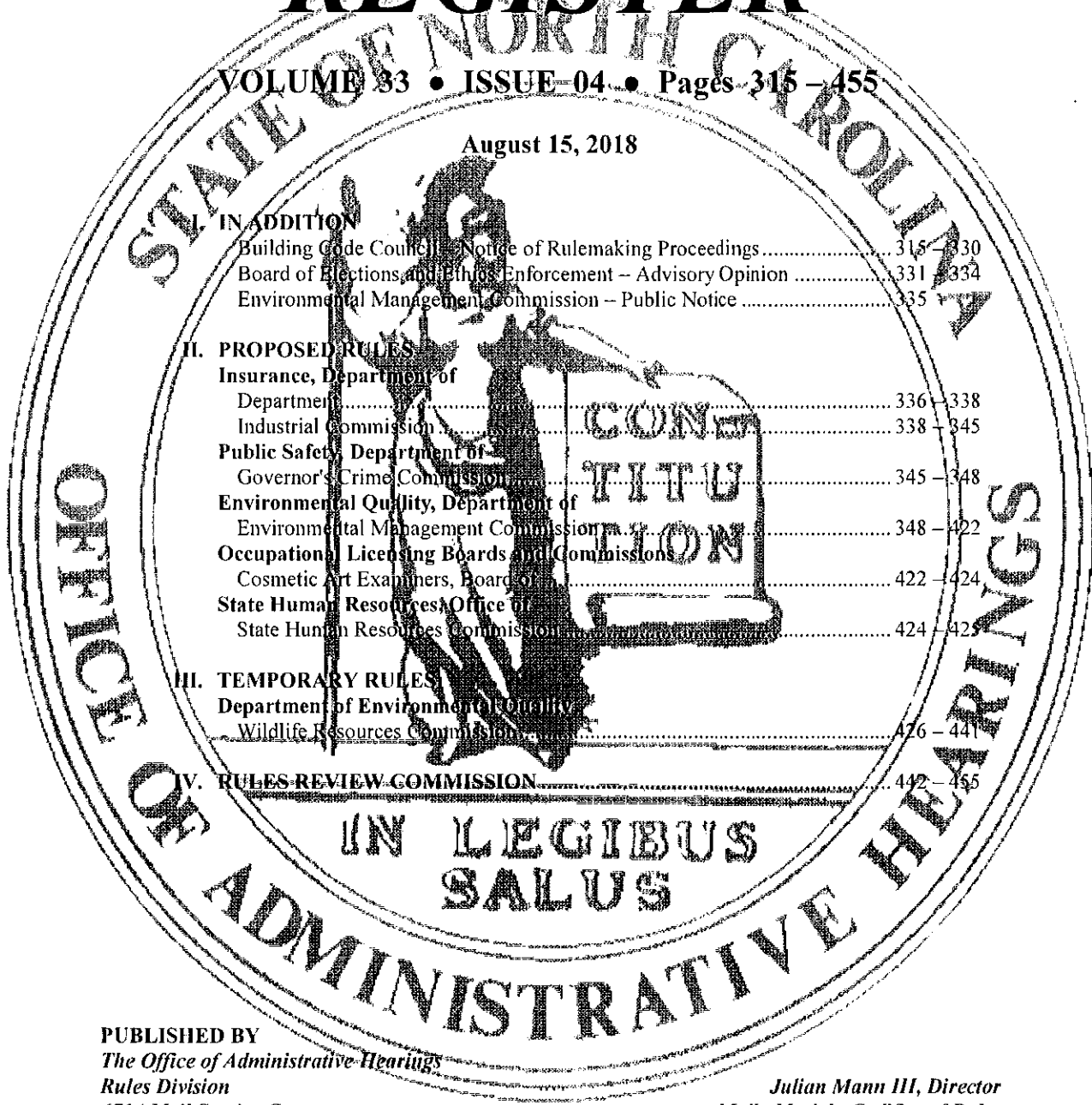
*Kelly K. Patterson*  
NOTARY PUBLIC



# NORTH CAROLINA REGISTER

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August 15, 2018



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**PROPOSED RULES**

- (1) a description of the insurance proposed, including primary and excess limits, the amount of coverage, the property insured, the deductible, and any other factor used for rating, where applicable;
- (2) the rate and premium that would be charged without application of consent to rate;
- (3) the proposed rate and premium;
- (4) the percent increase. The rate to be charged shall be presumed reasonable if it does not exceed 250 percent of the rate that would be charged without application of consent to rate. Any proposed rate in excess of 250 percent ~~must be explained fully and~~ is subject to review and approval by the Commissioner pursuant to G.S. 58-40-30(c);
- (5) the names and addresses of the insurer, the writing agent, and the insured;
- (6) the effective date of the proposed rate;
- (7) the policy period;
- (8) the policy number; and
- (9) a letter signed by the insured acknowledging and consenting to the proposed rate. If coverage for the specific risk written on consent to rate is available through a residual market (FAIR Plan, Beach Plan, North Carolina Reinsurance Facility, North Carolina Workers Compensation Insurance Plan), a statement signed by the insured acknowledging that fact must also be executed.

(b) If a policy for which the insured had consented to pay a higher premium rate is reinstated after a lapse, the insurer shall not have to obtain a signed statement from the insured under this Rule for the reinstatement.

(c) After a signed application is obtained by an insurer under this Rule for a policy, all subsequent changes in the policy shall be endorsements for the purposes of G.S. 58-40-30(c).

(d) If a particular kind of coverage is added to a policy by endorsement during the term of the policy and the added coverage is written at a higher rate under G.S. 58-40-30(c) and under this Rule, the insurer shall obtain the signature of the insured under this Rule no later than the next renewal of the policy.

(e) If an insured consents to pay a higher premium rate under G.S. 58-40-30(c) and this Rule and consent to rate coverage is subsequently terminated, if the insured and insurer enter into another agreement under G.S. 58-40-30(c) and this Rule, the insurer does not have to obtain the signature of the insured under this Rule unless three years have elapsed since the termination of the coverage.

(b)(f) A letter signed by each insured acknowledging and consenting to the proposed rate shall be retained in the insurer's office and be made available to the Commissioner upon request. All records generated under G.S. 58-40-30(c) and this Rule shall be maintained in accordance with the requirements of 11 NCAC 19 .0100.

*Authority G.S. 58-2-40(1); 58-40-30(c).*

**11 NCAC 10 .0605 CONSENT TO RATE AUTO LIABILITY COVERAGE**

When the consent to rate procedures under G.S. 58-36-30(b) are used to provide motor vehicle liability coverage limits at higher liability limits as required by an excess liability insurer, under G.S. 58-36-30(b); the application to effect required consent to rate notice shall also show the higher liability limits required by the excess liability insurer, read as follows:

NOTICE: THE PREMIUM THAT WE ARE CHARGING FOR HIGHER LIABILITY LIMITS ON AUTOMOBILE LIABILITY COVERAGE FOR YOUR COVERED VEHICLE(S) EXCEEDS THE PREMIUM BASED UPON THE APPROVED RATES IN NORTH CAROLINA, IN ACCORDANCE WITH G.S. 58-36-30(b).

*Authority G.S. 58-2-40(1); 58-36-30(b).*

**11 NCAC 10 .0606 CONSENT TO RATE PROCEDURES**

(a) If a policy for which the insured had consented to pay a higher premium rate is reinstated after a lapse, the insurer shall not have to obtain a signed statement from the insured under this Section for the reinstatement.

(b) All records generated under G.S. 58-36-30(b) or G.S. 58-40-30(c) and under this Section shall be maintained in accordance with 11 NCAC 19 .0002 and 11 NCAC 19 .0007.

(c) After a signed application is obtained by an insurer under this Section for a policy, all subsequent changes in the policy shall be endorsements for the purposes of G.S. 58-36-30(b) or G.S. 58-40-30(c).

(d) If a particular kind of coverage is added to a policy by endorsement during the term of the policy and the added coverage is written at a higher rate under G.S. 58-36-30(b) or G.S. 58-40-30(c) and under this Section, the insurer shall obtain the signature of the insured under Rules .0602 and .0603 of this Section no later than the next renewal of the policy.

(e) If an insured consents to pay a higher premium rate under G.S. 58-36-30(b) or G.S. 58-40-30(c) and under this Section and consent to rate coverage is subsequently terminated, if the insured and insurer enter into another agreement under G.S. 58-36-30(b) or G.S. 58-40-30(c) and under this Section, the insurer does not have to obtain the signature of the insured under Rules .0602 and .0603 of this Section unless three years have elapsed since the termination of the coverage.

*Authority G.S. 58-2-40(1); 58-36-30(b); 58-40-30(c).*

\*\*\*\*\*

*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*

**PROPOSED RULES**

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

**Public Hearing:**

**Date:** September 26, 2018

**Time:** 2:00 p.m.

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

**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.

**Comments 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](mailto:Ashley.snyder@ic.nc.gov)

**Comment period ends:** October 15, 2018

**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.

Authority G.S. 97-80(a).

**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.

Authority G.S. 97-80(a); 97-81(a).

**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 27699-4335.~~

Authority G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81.

**PROPOSED RULES**

**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](mailto: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](http://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 <del>4335</del> <u>1235</u> Mail Service Center, Raleigh, North Carolina <del>27699-4335, 27699-1235,</del> or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 18B	Always exempt from EDFP filing requirement	Electronically to forms@ic.nc.gov, by mail to <del>4335</del> <u>1235</u> Mail Service Center, Raleigh, North Carolina <del>27699-4335, 27699-1235,</del> 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 <del>4335</del> Mail Service Center, Raleigh, North Carolina <del>27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule</del>
Form 51	Always exempt from EDFP 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

**PROPOSED RULES**

Medical motions, responses, and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter	Always exempt from EDFP filing requirement	Electronically to <a href="mailto:medicalmotions@ic.nc.gov">medicalmotions@ic.nc.gov</a> 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 EDFP filing requirement	Electronically to <a href="mailto:fraudcomplaints@ic.nc.gov">fraudcomplaints@ic.nc.gov</a> 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 EDFP filing requirement	Electronically to <a href="mailto:medicalfees@ic.nc.gov">medicalfees@ic.nc.gov</a> 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 EDFP filing requirement	Electronically to <a href="mailto:safety@ic.nc.gov">safety@ic.nc.gov</a> 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 <a href="mailto:25N@ic.nc.gov">25N@ic.nc.gov</a>
Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to <a href="mailto:rehab.referrals@ic.nc.gov">rehab.referrals@ic.nc.gov</a>

(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 EDFP or U.S. Mail.

*Authority G.S. 97-80; 97-81.*

**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](mailto: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.

*Authority G.S. 97-80(a); 97-94.*

**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](mailto: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

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not approved by the Safety Education Director of the Commission.

*Authority G.S. 97-12; 97-80(a).*

### 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.~~

*Authority G.S. 97-18(h); 97-80(a).*

### 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.

*Authority G.S. 97-80(a); 97-83.*

#### 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.

*Authority G.S. 97-80(a); 97-83.*

#### 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.



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Authority G.S. 97-80(a).

### 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 EDFP category "Medical Motions and Responses." The submitting party shall contemporaneously ~~serve a copy of the filing to 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.~~

~~(e)(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 the this Subchapter and send a copy of the notice to all other counsel and all unrepresented parties involved in the proceeding.

~~(d)(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



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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~~ 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 EDFP 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) 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 EDFP, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.~~

*Authority* G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77.

#### 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

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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.

*Authority G.S. 97-80(a); 97-80(b); 97-83.*

### 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)~~ 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.

*Authority G.S. 97-79; 97-80(a); 97-84; 97-91.*

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

*Authority G.S. 97-79(b); 97-80(a).*

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## TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Public Safety/Governor's Crime Commission intends to readopt with substantive changes the rules cited as 14B NCAC 05 .0201-.0208, .0301-.0307, .0310, .0311, .0401, .0402, and .0501.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncdps.gov/administrative-rules>

**Proposed Effective Date:** February 1, 2019

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice):* Email Rulemaking Coordinator Margaret McDonald at [Margaret.mcdonald@ncdps.gov](mailto:Margaret.mcdonald@ncdps.gov) to request a public hearing.

**Reason for Proposed Action:** *The Agency designated the above referenced rules in Chapters 05 of Title 14B of the North Carolina Administrative Code as "Necessary with Substantive Public Interest" during the Periodic Rule Review. Upon further review of the Chapter, it has been determined that the rules should be repealed and replaced with new rules.*

**Comments may be submitted to:** Margaret McDonald, Department of Public Safety, 4201 Mail Service Center, Raleigh, NC 27699-4201

**Comment period ends:** October 15, 2018

**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
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

**Regulatory Impact Analysis**  
**Codification of and/or changes to filing requirements**  
Updated by agency: July 18, 2018

Agency: North Carolina Industrial Commission  
Contact: Ashley Snyder – (919) 807-2524  
Proposed New Rule Title:  
Rules proposed for amendment: Rule 11 NCAC 23A .0108  
Rule 11 NCAC 23A .0302  
Rule 11 NCAC 23A .0609A  
(See proposed rule text in Appendix 1)

State Impact: Yes  
Local Impact: Yes  
Private Impact: Yes  
Substantial Economic Impact: No

Statutory Authority: G.S. §§ 97-25, 97-80(a), Session Law 2017-102, s. 15.

Introduction/Background:

Prior to the Industrial Commission’s adoption of Rule 11 NCAC 23A .0108, which went into effect on February 1, 2016, the Commission’s rules gave specific direction in only a few places about how to file certain kinds of documents. There was no guidance in the rules for the bulk of the documents filed with the Commission. The Commission attempted to communicate desired filing methods by providing information on its website, in its correspondence, and at educational events. However, many documents were still filed with the wrong office or in person. The Commission previously offered and requested electronic filing of documents for several years via information campaigns. While the Commission was successful in efforts to encourage electronic filings, many documents continued to be filed via paper or facsimile, or filed via multiple methods at the same time.

To alleviate confusion and uncertainty for the public and inefficiency and errors in the filing of documents, the Commission started a pilot project a few years ago to build a secure Electronic Document Filing Portal (“EDFP”) to allow external users to upload certain high-volume documents instead of e-mailing, faxing, and/or mailing them to the Commission. This method of receiving documents was very efficient for users inside the Commission and increased filing and processing accuracy. The Commission received positive feedback from the external users of EDFP in the pilot phase. However, even though the Commission developed the EDFP capabilities for accepting document filings via EDFP, the Commission was not able to achieve high compliance rates with information campaigns alone.

The Commission proposed e-filing rules in 2015. After receiving public comments and holding a public hearing, the Commission adopted the proposed rules and filed them with the Rules

Review Commission on November 20, 2015. On December 17, 2015, the Rules Review Commission approved the adoption of 11 NCAC 23A .0108 and the amendments to nine other rules. The rules approved in the 2015 rulemaking went into effect on January 1, 2016, and February 1, 2016. These rules provided direction regarding electronic filing requirements and supported the Commission's implementation of a Clerk's Office.

The Commission noted positive impacts internally at the Commission, externally through users of the system, and on the workers' compensation system as a whole, following the implementation of the electronic filing rules. After the rules went into effect on February 1, 2016, requiring certain documents to be filed electronically in accordance with the new Rule 11 NCAC 23A .0108, the Commission experienced exceptional compliance rates from users of the system.

Based on the efficiencies of EDFP and the success of the first phase of the electronic filing rules, the Commission continued programming efforts to expand the list of documents accepted via EDFP. As a result, the Commission engaged in a second round of rulemaking to amend 11 NCAC 23A .0108 beginning in the fall of 2016. After receiving public comments and holding a public hearing, the Commission adopted the proposed rule amendment and filed it with the Rules Review Commission on December 20, 2016. On January 19, 2017, the Rules Review Commission approved the amendment to 11 NCAC 23A .0108. The resulting rule changes went into effect February 1, 2017. At that time, the Commission was unable to require Medical Motions and related filings in the documents required to be filed via EDFP due to the wording of G.S. 97-25(f).

In 2017, the General Assembly amended G.S. 97-25(f) to allow Medical Motions and related Responses to be filed by "electronic means." See Session Law 2017-102, Section 15. With this new authority, the Commission is moving forward with amendments to Rules 11 NCAC 23A .0108 and 11 NCAC 23A .0609A to require that Medical Motions be filed via EDFP. The proposed rule amendments also make minor changes to Rules 11 NCAC 23A .0108 and 11 NCAC 23A .0609A, primarily to delete unnecessary or duplicative requirements and re-word or clarify provisions without changing their import. These rule amendments are the subject of this fiscal note.

Also included in this fiscal note is a brief analysis of the impact of minor amendments to Rule 11 NCAC 23A .0302. These amendments make a grammatical correction, provide a specific date for the annual submission of carrier contact information, and provide an email address to which the contact information must be sent.

#### Proposed Rule Changes and Their Estimated Impact:

The proposed rule additions and changes include the following:

1. *Amendment of comprehensive electronic filing rule – Rule 11 NCAC 23A .0108*

This rule, adopted in the second phase of the Commission's transition to an electronic filing system, mandates and describes the electronic filing requirements for all workers'

compensation-related documents filed with the Commission. This rulemaking amends this rule to expand the documents to be filed via EDFP and to make other minor changes to the rule. The minor changes to the rule, which are not anticipated to have any fiscal impact, include updating addresses already stated in the rule and consolidating the information regarding filing a Form 19 into one provision.

a. Description of baseline situation:

As a result of the first and second phases of the e-filing rulemaking, all documents are filed with the Commission via EDFP, unless otherwise stated in the rule. Documents addressed in Paragraphs (d) and (e) of the current rule are filed by other electronic means or by mail. The changes that are the subject of this fiscal note will transition the Medical Motion documents that are currently being filed via electronic mail pursuant to Paragraph (e) to instead be filed via EDFP. Information and training on the Commission's filing methods is conspicuously provided on the Commission's website.

(1) Electronic Mail baseline use:

Filing documents with the Commission by electronic mail involves addressing an e-mail to the correct e-mail address and attaching the documents to be filed by clicking and dragging them to the electronic mail or browsing and selecting them. This filing method requires that documents be created electronically or that electronic copies of paper documents be created in order to be attached.

The Commission created electronic mail accounts related to particular types of filings or particular sections of the Commission (e.g., [medicalmotions@ic.nc.gov](mailto:medicalmotions@ic.nc.gov) for the Medical Motions for the Executive Secretary's Office and Deputy Commissioner Section). In the Commission's experience, filing documents via electronic mail creates the potential for various complications. Some parties incorrectly type the designated email address and sometimes do not receive an error message or they use the designated e-mail address but continue to carbon copy multiple individual employees at the Commission. These complications to the system lead to delays in processing and/or an increase in phone calls to the Commission requesting assistance.

While electronic mail is still greatly preferred over paper filings, moving documents from e-mails to the Commission's electronic claim file system is cumbersome and creates opportunities for misfiling. Each attachment to an e-mail must be dragged to the staff member's computer "desktop" and then uploaded to the electronic file using a browse and select method. Alternatively, staff may drag all of the documents to the "desktop" then combine them into one .pdf, which is then uploaded using a browse and select method. The staff member must also choose the document type from a drop-down menu and click to confirm and submit. When staff members are

uploading a document filed via electronic mail into the electronic file, this multi-step process allows for a risk of human error which would result in the document not ending up in the electronic case file. This misfiling can lead to inefficiency by requiring refileing, or even errors in decisions if a decisionmaker is unaware that a particular document should be in the file.

(2) EDFP baseline use:

EDFP requires users to register and receive an NCID. Users must review brief training materials regarding how to use EDFP. Documents are uploaded to EDFP using the file number of the claim and a browse and select function for each document to be uploaded. For each document uploaded, the user must select the document type from a drop-down menu. To complete the upload, the user must review the document submission and click to confirm and submit. The user receives a receipt confirming the upload via e-mail. EDFP is currently required for the filing of 264 types of documents and users are complying. Prior to the second phase of the EDFP expansion and the February 2017 version of 11 NCAC 23A .0108, many users frequently requested to file other documents via EDFP rather than via e-mail because EDFP was preferable to users of the system.

On the Commission side, staff members process documents submitted via EDFP by confirming the correct file number and party names. One or more of the documents in a particular filing may also be opened and viewed to confirm that the correct document types were used. Thereafter, the staff member clicks "Process Documents" and the documents appear in the electronic file. At that point, an e-mail is generated with the document name identified, and information pre-populated to allow the staff member to notify the appropriate Commission personnel of the document's existence in the file. This procedure greatly reduces the time spent moving electronic documents around and the chances of misfiling.

b. Description of proposed changes:

The proposed Rule 11 NCAC 23A .0108 as amended will require all Medical Motions, Responses, and appeals of administrative orders on Medical Motions filed pursuant to Rule 11 NCAC 23A .0609A to be submitted to the Commission via EDFP. The proposed rule does this by deleting these document types from Paragraph (e), removing them from the list of exceptions to the general EDFP requirement.

Both the Commission and its users will benefit from the filing of these documents via EDFP for several reasons, but there is a cost to external users in terms of slightly increased time to file the related documents. The Commission's cost for the planning and programming related to the EDFP document types for Medical Motions and Responses amounts to approximately \$15,759. However, that work

was performed in 2016 and the estimated amount was included in the cost of building out EDFP in the September 12, 2016 fiscal note that accompanied the second phase rule effective February 1, 2017. The costs and benefits of the proposed rule changes regarding filing Medical Motions are estimated below.

c. Economic Impact:

(1) Costs to the State through the Commission:

The Commission does not anticipate any significant costs related to the proposed rule changes. There may be an initial increase in calls or emails from external users to confirm the rule change. There may also be a brief period during which some external users fail to comply with the new rule and the Commission must correspond with them to reject the incorrect filings and inform them of the new rule. However, this is likely to occur in a relatively small number of cases for only a few weeks and the corrective action by the Commission will take a matter of 1-3 minutes per case. Therefore, the Commission expects no to minimal cost impact from the new rule.

(2) Costs to the State as an employer:

While it is unlikely that the State as an employer will have to expend additional funds to be able to comply with the technological aspects of the proposed rule changes, state employees such as attorneys and paralegals representing the State will file documents in workers' compensation claims via EDFP under these rule changes. The State's third-party administrator will also file documents with the Commission via EDFP. Similarly, local government units will file documents directly with the Commission or may have private sector third-party administrators or law firms file on their behalf. Local government is included in the public-sector cost analysis in this section.

o Costs associated with EDFP filing of Medical Motions:

Because EDFP is free to use, it is assumed that the most likely potential source of increased cost would be any increase in time required to file via EDFP as opposed to via electronic mail. Prior to the initial rulemaking adopting the first phase of 11 NCAC 23A .0108, some law firms estimated that it would take between 1-2 minutes more and 5-10 minutes more per set of documents filed via EDFP as opposed to e-mail. Other law firms declined to estimate the difference in time, stating that the benefits of a centralized filing location and a single, paperless method for submitting documents outweighed any time cost associated with using EDFP. In fact, it should be noted that following the electronic filing rules taking effect, filers have requested and conveyed their preference to use EDFP rather than electronic mail due to its convenience.

Based on this wide variation in responses, the Commission undertook a brief study prior to the initial implementation of the electronic filings rules. In the original test, the Commission recorded filing times using an experienced staff member to submit the same sets of documents via electronic mail and via EDFP in a test environment. The results for ten sets of documents, reflective of the electronic filing capabilities in that first phase, indicated a 1:3 ratio, with an average of 1.5 minutes difference per filing. In a similar analysis done prior to the second rulemaking, the Commission studied a sample set that more accurately reflected the body of documents that would be filed through EDFP under the second-phase rule. The Commission anticipated that the difference in filing time between electronic mail versus EDFP would be reduced as a result of practice and familiarity with the EDFP portal and electronic filing methods. As anticipated, the results for ten sets of documents indicated a 1.3:1 ratio, with an average of .25 of a minute (15 seconds) difference per filing. Assuming that not all users had yet reached this level of proficiency with the system, but factoring in that these filing methods had been used since February 1, 2016, thus resulting in documents being filed more quickly, an estimated average of the two test results was used to measure the additional time spent filing a document via EDFP. Therefore, it was estimated in the second phase of rulemaking that it took .875 of a minute (53 seconds) longer to file a document via EDFP than via electronic mail. Given the wide variety in the technological proficiency of EDFP users and the assumed ongoing influx of a certain percentage of new employees at the external users, the Commission believes the estimate of 53 seconds is likely still accurate in 2018 and will use this number for the analysis below.

- The Commission ruled on approximately 2,600 Medical Motions in FY 2016-17. The bulk of these motions were submitted via email, with a small percentage being filed by unrepresented employees via mail. Most Medical Motion submissions include a cover letter, motion, and one or more attachments. When a Medical Motion is filed with the Commission, the opposing party or parties are allowed to file a Response within a certain period of time. It is estimated, based on the Commission's records, that Responses are received in approximately 58% of the cases. Thus, in one year, the Commission receives approximately 1,500 Responses. Responses very often include a cover letter, Response, and one or more attachments. In about 2.5 percent of cases, the Commission receives a reply to a Response to a Medical Motion, also with a cover letter, pleading, and attachments, resulting in about 65 additional filings. The Commission also



receives a small number of motions to stay orders on Medical Motions via the designated email account, estimated by the processing assistants who handle them to be 20 a year.

- Based on the above, it is estimated that approximately 4,200 more documents would have been filed via EDFP in FY2017 under the proposed rule than the current baseline. If it takes an average of .875 of a minute (53 seconds) longer to file a document with attachments via EDFP, the difference will total 61.83 hours. Assuming that the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 11% of these hours could be attributed to state and local government filings and 89% to private sector.<sup>1</sup> If it is assumed that the average state legal or administrative assistant who would be doing the EDFP filing is paid on average \$35.71 in total hourly compensation,<sup>2</sup> the total cost of added time to state and local governments as filers would be about \$243 in FY2019.<sup>3</sup>

As discussed above, EDFP is a very common method for filing documents at the Commission already. Even a user in a paper-heavy environment would have to scan documents in order to e-mail them to the Commission under the current rule. Therefore, the proposed rule changes should not have a significant impact financially.

(3) Costs to private sector filers, including private employers, insurance carriers, and employees:

There are potential costs to the private sector associated with the additional time of uploading via EDFP. If it is assumed that 4,200 additional documents would now be filed through EDFP (see section on additional costs to state associated with EDFP filings) and that it takes an average of .875 of a minute

<sup>1</sup> Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

<sup>2</sup> 2017 wage estimates for paralegals and legal assistants in North Carolina reported by NC Department of Commerce, Occupational Employment and Wages in North Carolina (OES).

<https://d4.nccommerce.com/OESSelection.aspx>

Benefits as a percent of total compensation reported by NC OSHR. 2016 Compensation and Benefits Report.

[https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report\\_FINAL.pdf](https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report_FINAL.pdf)

Total compensation adjusted for recent 2% legislative increase.

<sup>3</sup> There is no feasible way to separate out the proportion of cases involving local government, but it should be noted that to the extent self-insured local government entities retain private legal counsel to represent them in workers' compensation cases, this amount may be higher and an actual cost, as opposed to an opportunity cost. The cost, if any, to local government entities that obtain private workers' compensation insurance from carriers will be indirect, reflected in any resulting increase in insurance premiums.

(53 seconds) longer to file these documents, the difference will total 61.83 hours. Assuming that the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 89% of these hours should be attributed to the private sector.<sup>4</sup> Private sector employers and carriers must retain private legal representation to file motions or responses with the Commission. Employees who hire legal counsel generally pay a legal fee on a contingency basis. Therefore, the proposed changes will have no or minimal impact on the legal fees paid by employees. However, there is a potential opportunity cost for the law firms representing employees to comply with the rule. Filing documents via EDFP is likely to be performed by paralegals or legal assistants, rather than attorneys. Based on an informal survey of private law firm rates, an average of \$90 is charged for paralegal/legal assistant time in workers' compensation cases. Therefore, the cost of added time to private sector filers would be about \$4,953 in FY2019.<sup>5</sup>

(4) Benefits to the State through the Commission:

The proposed rule changes will further improve the efficiency of receiving and processing documents at the Commission. There are numerous benefits that will accrue to the Commission and result in the customer service improvements for external users referenced above. Below is a list of the anticipated improvements to efficiency at the Commission and savings in time and money costs:

- Reduced time to upload documents to the electronic claim file of 1-2 minutes per set of documents filed. Similar to the analysis above, if 4,200 more documents are filed in a year via EDFP and they take 1.5 minutes less to upload per document, the savings to the Commission in opportunity cost can be monetized at about \$2,738. This is assuming that the Commission administrative assistant who would be doing the EDFP uploading is paid on average \$26.08 in total hourly compensation<sup>6</sup>, based on 2,080 work hours per year.
- Some minimal reduced time spent on telephone calls and e-mails regarding where and how to file documents, re-routing documents within the Commission, and correcting misfiled documents. As with any newly implemented process, there is an initial adjustment period

<sup>4</sup> Supra note 1.

<sup>5</sup> This amount may actually be a little lower because some of the medical motions filed are submitted by employees who do not have legal counsel and are not required to use EDFP to file medical motions. The Commission does not track whether motions are filed by attorneys or *pro se* employees.

<sup>6</sup> The processing assistants who process medical motions at the Commission earn between \$31,000 and \$36,000 per year, with an average of \$33,500, or \$54,255 in total compensation.

Total compensation calculated with salary as 65.8% and benefits as 34.2%.

Benefits as a percent of total compensation reported by NC OSHR. 2016 Compensation and Benefits Report.

[https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report\\_FINAL.pdf](https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report_FINAL.pdf)

Total compensation adjusted for recent 2% legislative increase.

for users of the system that results in an increase in calls and requests for assistance as filers learn and familiarize themselves with the new system. This was the experience of the Commission upon the effective date of the first phase of the electronic filing rules. However, the number of documents affected by the proposed rule changes is only a small percentage of the documents affected by the first and second phase e-filing rule changes. In addition, external and internal users are now quite familiar with using EDFP. Therefore, the Commission anticipates that the proposed rule changes will result in a small temporary spike of calls and emails to a handful of Commission employees, after which there will be a very small reduction in the baseline number of calls and emails received by the one or two Commission employees dedicated to the Medical Motions process. The average time spent by processing assistants temporarily spiked, but then gradually began to taper out as users became more familiarized with the new system. Prior to the first phase of the electronic filing rules, the Commission's 57 processing assistants were averaging 25% of the working day spent on this task. As a baseline for the current rule amendment, the Commission estimates that about 7-8 Commission processing assistants spend an average of 4% of the work day handling these issues in relation to Medical Motions, depending on the nature of the position. The new process is anticipated to gradually cut this average down to 1% of the work day, saving the Commission a little less than 2 hours a day beginning 2018, assuming an 8-hour work day. With an assumed average total compensation rate of \$26.08 per hour for Commission administrative assistants and a 260-day work year<sup>7</sup>, the opportunity cost savings would be about \$13,562 in FY2018 once the time spent on filing assistance reached an average of 1%.

(5) The benefits to the public and private sector as filers:

The proposed rule changes will benefit the public and private sector (employees, employers, insurers, administrators, law firms, etc., including state and local government in their capacities as employers) in several ways. Below is a list of anticipated benefits that will accrue to users of the Commission:

- Streamlined information and directions regarding how and where to file Medical Motion documents with the Commission will save users time spent on communicating with the Commission about how to file documents, re-routing documents within the Commission, and correcting misfiled documents. This time saved will equal at least the time saved by the Commission and include additional time filers spend

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<sup>7</sup> The Commission estimated time savings based on consultation with the Commission Clerk and a random sampling of processing assistants.

trying to fix these issues on their own before they contact the Commission. There is no way of knowing how much time users spend before contacting the Commission, so this cannot be quantified. Users will save in total the same 2 hours a day the Commission saves. As stated earlier, an average of \$90 per hour is charge to private sector employers and carriers for work by legal assistants at private law firms. This is also a reasonable estimate of the hourly opportunity cost for firms representing employees. Public sector administrative staff have a total hourly compensation rate of \$35.71.<sup>8</sup> If we continue to assume that the private sector accounts for 89% of the filings and the public-sector accounts for 11%,<sup>9</sup> then private and public-sector filers will save about \$46,800 and \$18,569<sup>10</sup>, respectively, beginning in FY2019, after an initial learning period.

- Users' customer service experience will improve based on the following:
  - (1) Commission staff will have incrementally more time to answer calls and inquiries on substantive matters.
  - (2) Commission staff will be able to process documents more efficiently which will improve turnaround times.

## 2. *Amendment of Medical Motion rule – Rule 11 NCAC 23A .0609A*

The proposed amendments to Rule 11 NCAC 23A .0609A fall into four different categories. The fiscal impact of the amendments described in b.-d. are not monetized due to the very minimal impact anticipated.

### a. Amendments for consistency with changes to Rule 11 NCAC 23A .0108

The proposed changes to the rule language in all Paragraphs but Paragraphs (c) and (d) (formerly Paragraphs (d) and (e)) are intended to make the rule consistent with the proposed changes to Rule 11 NCAC 23A .0108 discussed above. Therefore, the impact of these changes is the same impact discussed in Section 1. above.

### b. Changes to remove unnecessary requirements

The proposed rule changes to former Paragraph (d)(2)-(6) and former Paragraph (e)(2)-(4) and (6) are intended to remove unnecessary requirements for information to be included in the body of a Medical Motion. The information

<sup>8</sup> Supra note 2.

<sup>9</sup> Supra note 1.

<sup>10</sup> There is no feasible way to separate out the proportion of cases involving local government, but it should be noted that to the extent self-insured local government entities retain private legal counsel to represent them in workers' compensation cases, this amount may be higher and an actual savings, as opposed to an opportunity cost savings. The savings, if any, to local government entities that obtain private workers' compensation insurance from carriers will be indirect, reflected in any resulting decrease in insurance premiums.

required includes party, counsel, and insurance adjuster names and contact information that is already in the Commission's records or elsewhere in the documents filed with the motion. In addition, there is no need for the parties to provide the employer or carrier code to the Commission, as the Commission already has this information and is usually the source of the information for the parties. Some of the information requirements were retained in former Paragraph (e)(2) due to the nature of the emergency Medical Motions subject to this rule.

Under the current rule, approximately 90% of the Medical Motions filed with the Commission fail to include one or more of the pieces of information at issue. Therefore, compliance with these unnecessary requirements is already low. In a small percentage of cases, the opposing party objects to the motion on the basis that it did not comply with the Rule. This puts the Commission in the untenable position of having to deny a potentially meritorious motion based on a failure to comply with an unnecessary rule or to ignore its own rules.

In terms of benefits, the State as the Commission will reap the intangible benefit from these proposed changes by no longer having to decide whether to enforce an unnecessary rule. State and local government as employers, private employers or carriers, and employees or their counsel, will benefit from not having to gather and type the required information in the motion when they file Medical Motions. These savings could range from five to 30 minutes per motion. The requirements are particularly burdensome for employees without representation who may have no idea how to or no reliable way to gather the information, so they will benefit the most proportionately from the rule changes, possibly saving an hour or more per motion. Given that these saving will apply to only 10% of the motions filed per year, or 260 motions, these rule changes represent only minimal savings.

In terms of costs, there may be a tiny, occasional cost to the Commission under the proposed changes in having to find a piece of information that may not be in the motion or its attachments or in the Commission's records. However, given the low compliance rate with the current rule, the cost is *de minimis*. There is no anticipated cost to the public or private filers of Medical Motions, but there could be a small intangible loss to opposing parties who would no longer be able to argue that a motion should be denied for failure to comply with the deleted requirements.

c. Changes requiring an attempt to contact the opposing party prior to filing motion

The proposed changes to former Paragraph (d)(13) and former Paragraph (e)(10) require a party to include in the motion a statement of the opposing party's position on the motion or that a reasonable attempt was made to contact the opposing party to ascertain its position prior to filing the Medical Motion. This new requirement adds to the existing part of the rule that requires a representation that the motion filer sought to resolve the dispute informally. The goal of this rule is to encourage the parties to try to work out the dispute before filing a motion.

Many Medical Motions filed already include all of this information, so the rule is aimed at the smaller proportion of motions that do not. In most cases, a filer will just need to include the information they already know in the motion in order to comply, which is a very small cost. In a few cases, filers will need to attempt to contact the opposing party, which may impose a small cost, but may also result in a small reduction in the number of motions filed if the contact results in resolution. Due to the relatively small number of motions affected, it is anticipated that this amendment will have minimal, if any, fiscal impact.

d. Changes to add a reference to another rule

The proposed changes to former Paragraph (d)(14) and former Paragraph (e)(12) will require that proposed orders filed with Medical Motions must be filed in accordance with Rule 11 NCAC 23A .0609, which requires that a proposed Order be filed with any motion or response. This change will have no impact as Rule 11 NCAC 23A .0609 does not contain any additional requirements for proposed orders.

3. *Amendment of Carrier Contact Information Rule -- Rule 11 NCAC 23A .0302*

The amendments proposed in Rule 11 NCAC 23A .0302 are intended to clarify the existing language and encourage compliance with the requirements of the rule. In addition to one minor grammatical change, the proposed language amends the requirement regarding the provision of contact information to the Commission. First, the proposed language inserts a date-certain to the annual requirement. By specifying a date for the information to be provided and updated, it will help the Commission track the collection and maintenance of this information. Additionally, the insertion of the email address to send the requested information should enhance compliance by providing clear directions for submitting this information. There are no fiscal impacts to state or local governments, and no substantial economic impact to the overall workers' compensation system because the majority of filers are already in compliance and the cost to the remainder of the filers is *de minimis*.

Summary of aggregate impact:

The monetized costs and benefits cited above, in the aggregate, amount to an annual impact of \$86,865. Costs and benefits will continue indefinitely. Because the external stakeholders and Commission staff are already very familiar with using EDFP, the transition to filing Medical Motions via EDFP is expected to happen very quickly. The costs relate to the slight increase in time required to file documents via EDFP. The bulk of the estimated savings related to the proposed rules comes from time saved by the Commission and its users based on a comprehensive set of rules guiding users on where and how to file documents with the Commission. The rule change will streamline the rule with uniform electronic filing resulting in increased efficiency for the Commission and external stakeholders.

Benefits related to the electronic filing changes that are not quantified in this analysis due to lack of data or uncertainty include: improved customer service, improved turnaround times, and reduced filing errors.

It is anticipated that the rules will go into effect on January 1, 2019, and that the same level of cost and benefit will recur each year. A summary of the fiscal impacts is presented in the table below.

Table 1: Summary of Impacts

	<b>Annual Impact</b>
<b>COSTS</b>	
<i>State</i>	
Added Filing Time Costs	243.00
<i>Private</i>	
Added Filing Time Costs	4,953.00
<b>Total Costs</b>	<b>5,196.00</b>
<b>BENEFITS</b>	
<i>State</i>	
Time Saved - Processing Filings	2,738.00
Time Saved - Filing Assistance (Commission)	13,562.00
Time Saved - Filing Assistance (Public Filers)	18,570.00
<i>Private</i>	
Time Saved - Filing Assistance	46,800.00
<i>Unquantified Benefits</i>	
Improved efficiency, reduced errors	
<b>Total Benefits</b>	<b>81,669.00</b>
<b>TOTAL IMPACT</b>	<b>86,865.00</b>
<b>NET BENEFITS</b>	<b>76,473.00</b>



## APPENDIX 1

Proposed Rule Text**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](mailto: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](mailto: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](http://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 <a href="mailto:forms@ic.nc.gov">forms@ic.nc.gov</a> , by mail to 4335-1235 Mail Service

		Center, Raleigh, North Carolina <del>27699-4335, 27699-1235</del> , or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 18B	Always exempt from EDFP filing requirement	Electronically to forms@ic.nc.gov, by mail to <del>4335 1235</del> Mail Service Center, Raleigh, North Carolina <del>27699-4335, 27699-1235</del> , 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.	<del>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</del>
Form 51	Always exempt from EDFP 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 EDFP 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 EDFP 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 EDFP 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 EDFP 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.*

## 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.*

## 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](mailto: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 EDFP 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.~~

~~(e)~~ (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 the this Subchapter and send a copy of the notice to all other counsel and all unrepresented parties involved in the proceeding.

~~(d)~~ (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.ne.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 EDFP 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) 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.ne.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 EDP, 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.*