

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

OCTOBER 20, 2015

HEARING BEFORE THE FULL COMMISSION

ON

PROPOSED RULE CHANGES

A P P E A R A N C E S

COMMISSIONERS:

Andrew T. Heath, Chairman

Bernadine S. Ballance

Linda Cheatham

Charlton L. Allen

Tammy R. Nance

I N D E X

SPEAKERS:

PAGE

Meredith Henderson 2

E X H I B I T S

IDENTIFIED ADMITTED

(Henderson) Exhibit Number 1 2 5

(Henderson) Exhibit Number 2 2 5

P R O C E E D I N G S

CHAIRMAN HEATH: Okay. Good afternoon. We're on the record. Today is October 20th, 2015. This is a North Carolina Industrial Commission public hearing on proposed rulemaking. Good afternoon. My name is Andrew Heath. I'm Chairman of the North Carolina Industrial Commission. The purpose of this hearing is to receive comments from the public regarding the e-filing and other rules proposed for permanent rulemaking by the Commission and published in the *North Carolina Register* on September 15, 2015. We've not yet received written comments from the public, but the record will be held open to receive written comments from the public through the close of business on November 16, 2015. At this time, I'd like to introduce the other Commissioners. On my left are Commissioners Nance and Allen. On my right are Commissioners Ballance and Cheatham. Commissioner McDonald is ill today, and so he is not in attendance. At this time, the Commission wishes to thank the members of the public and the various stakeholders who gave recommendations or input regarding the proposed rule changes considered by the Commissioners. The Commission very much appreciates everyone's time and efforts. Anyone who wishes to speak at this hearing

1 must sign up to do so with Executive Secretary
2 Meredith Henderson so that we have the correct
3 spelling of your name and can call you in order to
4 speak. So if anybody would like to speak and has not
5 yet signed up, please do so now. The first and only
6 speaker will be Meredith Henderson, Executive
7 Secretary and rulemaking coordinator. So, if you
8 would, please state for the record your name.

9 MEREDITH HENDERSON

10 MS. HENDERSON: I'm Meredith Henderson. I'm the
11 Executive Secretary of the Commission.

12 CHAIRMAN HEATH: And you have prepared exhibits
13 that you would like to place into the record of these
14 proceedings?

15 MS. HENDERSON: Yes. I have Exhibit 1, which is a
16 copy of the proposed rules as published in the *North*
17 *Carolina Register*, the September 15th, 2015 issue, and
18 also Exhibit 2, which is a copy of the fiscal note
19 analyzing the regulatory impact of these proposed
20 rules as marked as Exhibit 2.

21 (Exhibit Numbers 1 and 2 are
22 identified.)

23 CHAIRMAN HEATH: Thank you. Could you briefly
24 give us some background and list the rules that would
25 be affected by the proposed rule changes?

1 MS. HENDERSON: Yes. We have one rule for
2 adoption. That is, these are all Title 4 of the
3 Administrative Code, Subchapter 10A, so all of the
4 rules I cite will be in that subchapter. We propose
5 for adoption Rule .0108, which would be titled
6 "Electronic Filings with the Commission; How to File."
7 All of these proposed rules, with the exception of
8 one, would be for - effective February 1st, 2016.
9 There are nine rules proposed for amendment. These
10 include Rules .0101, .0404, .0405, .0502, .0609,
11 .0609A, .0610, .0613 and .0617. Only Rule .0101 is
12 proposed to be effective January 1st, and that has to
13 do with the location of the main office and the hours
14 of business. The primary point of this rulemaking is
15 to put Rule .0108 in place, providing guidance on
16 electronic filing and other filings before the
17 Commission. Most of the other rule changes have to do
18 with that, putting that rule in place and a few other
19 changes and cleanups in those rules. The statutory
20 basis for these changes is General Statute 97-80. The
21 Commission has followed the permanent rulemaking
22 procedures of the Administrative Procedure Act in
23 proposing these rules. The relevant dates involved
24 include the following: The proposed rules were filed
25 with a notice of text with the Office of

1 Administrative Hearings on August 24th, 2015; they were
2 then published in the *North Carolina Register*, as I
3 said before, the September 15th issue of this year; and
4 on the same date, September 15th, the Commission
5 published a notice of these rules and a link to the
6 fiscal note on the Commission's website, as required,
7 and also emailed notice with a link to these rules and
8 a link to the fiscal note to the Industrial
9 Commission's rules lister. It's an interested
10 person's lister that we're required to maintain, so
11 all those things were done at the same time. Copies
12 of the rules and fiscal note were also provided to the
13 North Carolina League of Municipalities and the North
14 Carolina Association of County Commissioners as
15 required by statute. And that's all the information I
16 have to provide. We haven't had any speakers to sign
17 up, as you can see, and I think that's all I have to
18 put in the record.

19 CHAIRMAN HEATH: Thank you. Do any members of the
20 Commission have any questions for Ms. Henderson?
21 Okay. Thank you. You may be seated.

22 MS. HENDERSON: Thank you.

23 (SPEAKER DISMISSED)

24 CHAIRMAN HEATH: Thank you all for participating
25 in this public hearing. The period for written

1 comments will be held open through the close of
2 business on November 16, 2015, so if you have any
3 further comments, please send them to Executive
4 Secretary Henderson as directed in the hearing notice
5 in the *North Carolina Register*. Written comments and
6 the comments made at the hearing today will be made
7 part of the public record of these proceedings. We
8 would like to include in the transcript of this
9 proceeding the materials submitted by Ms. Henderson as
10 Exhibits 1 and 2.

11 (Exhibit Numbers 1 and 2 are
12 admitted.)

13 CHAIRMAN HEATH: Are there any further matters to
14 come before the public hearing? If not, the hearing
15 is adjourned. Thank you.

16 (WHEREUPON, THE HEARING WAS ADJOURNED.)

17 RECORDED BY MACHINE

18 TRANSCRIBED BY: Lisa D. Dollar, Graham Erlacher and
19 Associates

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

C E R T I F I C A T E

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

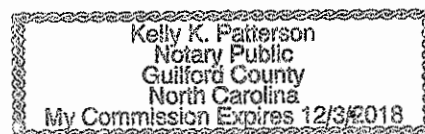
I further certify that I have no financial interest in the outcome of this action. Nor am I a relative, employee, attorney or counsel for any of the parties.

WITNESS my Hand and Seal on this 21st day of October 2015.

My commission expires on December 3, 2018.

Kelly K. Patterson

NOTARY PUBLIC



PROPOSED RULES

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Industrial Commission intends to adopt the rule cited as 04 NCAC 10A .0108 and amend the rules cited as 04 NCAC 10A .0101, .0404, .0405, .0502, .0609, .0609A, .0610, .0613, and .0617.

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

Proposed Effective Date: January 1, 2016 for Rule 04 NCAC 10A .0101; February 1, 2016 for all other proposed rules

Public Hearing:

Date: October 20, 2015

Time: 2:00 p.m.

Location: Dobbs Building, Room 2173, 430 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: The Industrial Commission has proposed to adopt a comprehensive electronic filing rule, 04 NCAC 10A .0108, for two primary reasons. First, the rule will assist the Industrial Commission's regulated public by centralizing all information regarding how to file documents in one rule. Second, the rule will mandate electronic filing, with exceptions for filers without electronic filing capabilities, and prohibit duplicate filings, both of which will significantly improve the accuracy and efficiency of document intake and processing by the Industrial Commission. Most of the amendments proposed for Rules 04 NCAC 10A .0404, 04 NCAC 10A .0405, 04 NCAC 10A .0502, 04 NCAC 10A .0609, 04 NCAC 10A .0609A, 04 NCAC 10A .0610, 04 NCAC 10A .0613, and 04 NCAC 10A .0617 modify these rules to make them consistent with the proposed new 04 NCAC 10A .0108.

There are a few other proposed amendments that do not specifically relate to the proposed e-filing rule, but also are intended to improve efficiency. There are two proposed changes to Rule 04 NCAC 10A .0404 related to service of the Form 24 Application and the Form 24 Application decision that are intended to make the process more efficient and to save the State and the regulated public money. There are also minor rule citation corrections proposed for Rules 04 NCAC 10A .0404, 04 NCAC 10A .0405, and 04 NCAC 10A .0502. There is a proposed change to Rule 04 NCAC 10A .0609 to regulate the format of motions and responses so that they all contain certain necessary information and are not filed within the text of e-mails or at the end of briefs. There are also proposed changes to Rules 04 NCAC 10A .0609, 04 NCAC 10A .0609A, and 04 NCAC 10A .0617 requiring that proposed Orders be submitted in Microsoft Word

format to allow Industrial Commission staff to edit the Orders prior to filing them.

The change proposed to Rule 04 NCAC 10A .0101 will designate the Raleigh office of the Industrial Commission as the main office in the context of the recent opening of regional Industrial Commission offices.

Comments may be submitted to: Meredith Henderson, Executive Secretary and Rulemaking Coordinator, 4333 Mail Service Center, Raleigh, NC 27699-4333, phone (919) 807-2575, email meredith.henderson@ic.nc.gov

Comment period ends: November 16, 2015

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

CHAPTER 10 - INDUSTRIAL COMMISSION

SUBCHAPTER 10A - WORKERS' COMPENSATION RULES

SECTION .0100 – ADMINISTRATION



PROPOSED RULES

04 NCAC 10A .0101 LOCATION OF MAIN OFFICE AND HOURS OF BUSINESS

The offices—main office of the North Carolina Industrial Commission are-is located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not being filed electronically 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).

04 NCAC 10A .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 which requires contemporaneous payment of a processing fee pursuant to Rule 04 NCAC 10E .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 and employers without legal representation. Claimants and employers without legal representation may file documents with the Commission via EDPF, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) All documents listed in Table 1 below shall be transmitted to the Commission via the Commission's Electronic Document Filing Portal ("EDFP"). Information regarding how to register for and use EDPF is available at <http://www.ic.nc.gov/training.html>. In the event EDPF is inoperable, all documents listed in Table 1 below shall be sent to the Commission via electronic mail to edfp@ic.nc.gov. Documents listed in Table 1 below which are sent to the Commission via electronic mail when EDPF is operable shall not be accepted for filing.

Table 1: Documents to be filed via EDPF

Appeal of Administrative Order to Full Commission
Appeal of Medical Motion Order to Full Commission
Appeal of Opinion and Award of Deputy Commissioner
Appeal of Order of Executive Secretary (Non-Medical)
Attorney Representation Letter
Brief to the Full Commission
Brief or Contentions
Compromise Settlement Agreement
Confirmation of Scheduling of Mediation
Court of Appeals – Notice of Appeal
Deposition
Form 18M
Form 21
Form 23 Application
Form 23 Response
Form 23 Additional Documentation
Form 24 Application
Form 24 Response
Form 24 Additional Documentation
Form 26

Form 26A
Form 33
Form 33R
Form 44
MSC2
MSC4
MSC5
Pre-trial Agreement
Notice of Scheduled Mediation

Transcripts of depositions shall be filed with the Commission pursuant to this Paragraph by the court reporting service. The transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The parties shall provide the court reporting service with the information necessary to effectuate electronic filing of the deposition transcripts and attached exhibits. 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.

(c) The workers' compensation forms listed in Table 2 below and all other documents to be filed with the Commission's Claims Administration Section shall be sent to the Commission via electronic mail to forms@ic.nc.gov.

Table 2: Forms to be filed via electronic mail to forms@ic.nc.gov

Form 18
Form 18B
Form 26D
Form 28
Form 28B
Form 28C
Form 28T
Form 29
Form 30
Form 30A
Form 30D
Form 31
Form 60
Form 61
Form 62
Form 63

(d) Motions, motion responses, and all other documents not referenced in Paragraphs (b) and (c) of this Rule shall be filed with the Commission via electronic mail in accordance with Subparagraphs (1) through (11) of this Paragraph:

- (1) Medical motions and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter shall be filed via electronic mail to medicalmotions@ic.nc.gov.
- (2) Motions or notices filed with the Office of the Executive Secretary pursuant to Rule .0609(b) of this Subchapter and any other documents to be filed with the Office of the Executive

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- Secretary which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to execsec@ic.nc.gov.
- (3) Motions before a Deputy Commissioner filed pursuant to Rule .0609(a) of this Subchapter and any other documents to be filed with a Deputy Commissioner which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to deputy@ic.nc.gov.
- (4) Motions before the Full Commission filed pursuant to Rule .0609(c) of this Subchapter and any other documents to be filed with the Full Commission which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to fullcommission@ic.nc.gov.
- (5) Motions and any other documents to be filed with the Commission's Claims Administration Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to forms@ic.nc.gov.
- (6) Documents to be filed with the Commission's Docket Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to dockets@ic.nc.gov.
- (7) Documents to be filed with the Commission's Mediation Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to mediation@ic.nc.gov.
- (8) Documents to be filed with the Commission's Compliance & Fraud Investigative Division which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to fraudcomplaints@ic.nc.gov.
- (9) Documents to be filed with the Commission's Medical Fees Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to medicalfees@ic.nc.gov.
- (10) Documents to be filed with the Commission's Safety Education & Training Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to safety@ic.nc.gov.
- (11) Forms 25N to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent via electronic mail to 25n@ic.nc.gov. Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent via electronic mail to rehab.referrals@ic.nc.gov.

(e) A one-year waiver shall be granted to a self-insured employer, carrier, third-party administrator, or law firm that notifies the Commission of its inability to comply with the electronic filing requirements in Paragraph (a) of this Rule due to a lack of the necessary internet technology resources. The notification shall indicate why the entity is unable to comply with the rule and outline its plan for coming into compliance within the one-year period. The notification shall be filed with the Office of the Clerk of the Commission via facsimile or U.S. Mail.

(f) A self-insured employer, carrier, third-party administrator, or law firm may apply to the Commission for an emergency

temporary waiver of the electronic filing requirement in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems and/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.

Authority G.S. 97-80.

SECTION .0400 - DISABILITY, COMPENSATION, FEES

04 NCAC 10A .0404 TERMINATION AND SUSPENSION OF COMPENSATION

(a) No application to terminate or suspend compensation shall be approved by the Commission without a formal hearing if the effect of the approval is to set aside the provisions of an award of the Commission.

(b) When an employer, carrier, or administrator seeks to terminate or suspend temporary total disability compensation being paid pursuant to G.S. 97-29 for a reason other than those specified in G.S. 97-18(d) (payment without prejudice), G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only for claims arising on or after June 24, 2011)), the employer, carrier, or administrator shall notify the employee's attorney of record or the employee, if not represented, on Form 24, *Application to Terminate or Suspend Payment of Compensation*. This form requests:

- (1) the date of injury or accident and date the disability began;
- (2) the nature and extent of injury;
- (3) the number of weeks compensation paid and the date range including from and to;
- (4) the total amount of indemnity compensation paid to date;
- (5) whether one of the following events has occurred:
 - (A) an agreement was approved by the Commission and the date;
 - (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
 - (C) an employer paid compensation to the employee without contesting the claim within the statutory period provided under G.S. 97-18(d); or
 - (D) any other event related to the termination or suspension of compensation;
- (6) whether the application is made to terminate or suspend compensation and the grounds; and
- (7) whether the employee is in managed care.

(c) The employer, carrier, or administrator shall specify the grounds and the alleged facts supporting the application, and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 *Application to Terminate or Suspend Payment of Compensation* by inserting a date 17 days from the date the employer, carrier, or administrator serves the completed Form 24 *Application to Terminate or Suspend Payment of Compensation*.

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on the employee's attorney of record by e-mail or facsimile, or the employee, if not represented, by ~~certified mail, return receipt requested, first class mail~~. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and attached documents shall be sent to the Commission via upload to the Electronic Document Fee-Filing Portal, ~~Portal in accordance with Rule .0108 of this Subchapter~~, and shall be contemporaneously served on employee's counsel by e-mail or facsimile, or on the employee, if unrepresented, by ~~certified mail, return receipt requested, first class mail~~.

(d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages of documents attached which are to be considered by the Commission. If the employee or the employee's attorney of record objects by the date inserted on the employer's Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall set the case for an informal hearing, unless waived by the parties in favor of a formal hearing. The objection ~~shall be filed in accordance with Rule .0108 and~~ shall be accompanied by all currently available supporting documentation. A copy of any objection shall be contemporaneously served on the employer, carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant documentation received after the initial filing. The term "carrier" or "administrator" also includes any successor in interest in the pending claim.

(e) If an employee does not object within the allowed time, the Commission shall review the Form 24 *Application to Terminate or Suspend Payment of Compensation* and any attached documentation, and an Administrative Decision and Order shall be rendered without an informal hearing as to whether there is a sufficient basis under the Workers' Compensation Act to terminate or suspend compensation, except as provided in Paragraph (g) of this Rule. Either party may seek review of the Administrative Decision and Order as provided by Rule .0703 .0702 of this Subchapter.

(f) If the employee timely objects to the Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 24 *Application to Terminate or Suspend Payment of Compensation*, unless the time is extended for good cause shown. The informal hearing may be by telephone conference between the Commission and the parties or their attorneys of record. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the above, the employer, carrier, or administrator may waive the right to an informal hearing, and proceed to a formal hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*.

(g) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0703 .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be preemptorily set and shall not require a Form 33 *Request that*

Claim be Assigned for Hearing. The employer has the burden of producing evidence on the issue of the employer's application for termination or suspension of compensation. If the Deputy Commissioner reverses an order previously granting a Form 24 *Application to Terminate or Suspend Payment of Compensation* motion, the employer, carrier, or administrator shall promptly resume compensation or otherwise comply with the Deputy Commissioners decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85. (h) If the Commission is unable to reach a decision after an informal hearing, the Industrial Commission shall issue an order to that effect that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employer, carrier, or administrator shall within 30 days of the date of the Administrative Decision and Order file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary. The effect of placing the case on the docket shall be the same as if the Form 24 *Application to Terminate or Suspend Payment of Compensation* were denied, and compensation shall continue until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

(i) The Commission shall ~~mail any Administrative Decision and Order to the non-prevailing party by certified mail, send a copy of the Administrative Decision and Order to a non-prevailing party who is without legal representation by certified mail~~.

(j) No order issued as a result of an informal Form 24 *Application to Terminate or Suspend Payment of Compensation* hearing shall terminate or suspend compensation retroactively to a date preceding the filing date of the Form 24 *Application to Terminate or Suspend Payment of Compensation*. Compensation may be terminated retroactively without a formal hearing where there is agreement by the parties, where allowed by statute, or where the employee is incarcerated. Otherwise, retroactive termination or suspension of compensation to a date preceding the filing of a Form 24 *Application to Terminate or Suspend Payment of Compensation* may be ordered as a result of a formal hearing. Additionally, nothing shall impair an employer's right to seek a credit pursuant to G.S. 97-42.

(k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

Authority G.S. 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a).

04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION

(a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks reinstatement of compensation pursuant to G.S. 97-18(k), the employee may notify the employer, carrier, or administrator, and the employer's, carrier's, or administrator's attorney of record, on a Form 23 *Application to Reinstate Payment of Disability Compensation*, or

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by the filing of a Form 33 *Request that Claim be Assigned for Hearing*.

(b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstatement of Disability Compensation*, the original Form 23 *Application to Reinstatement of Disability Compensation* and the attached documents shall be ~~sent to the Commission at the same time and by the same method by which in accordance with Rule .0108 of this Subchapter and a copy of the Form 23 and attached documents are contemporaneously sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record.~~ The employee shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employer" portion of Form 23 *Application to Reinstatement of Disability Compensation* by inserting a date 17 days from the date the employee serves the completed Form 23 *Application to Reinstatement of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any. The Form 23 *Application to Reinstatement of Disability Compensation* shall specify the number of pages of documents attached that are to be considered by the Commission. Within 17 days from the date the employee serves the completed Form 23 *Application to Reinstatement of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any, the employer, carrier, or administrator shall complete Section B of the Form 23 *Application to Reinstatement of Disability Compensation* and ~~send file it to with the Commission in accordance with Rule .0108 of this Subchapter and send a copy contemporaneously to the employee, or the employee's attorney of record, at the same time and by the same method by which the form is sent to the Commission record.~~

(c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review the Form 23 *Application to Reinstatement of Disability Compensation* and attached documentation and, without an informal hearing, render an Administrative Decision and Order as to whether there is sufficient basis under the Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be rendered within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a response to the Form 23 *Application to Reinstatement of Disability Compensation*. Either party may seek review of the Administrative Decision and Order as provided by Rule .0703 .0702 of this Subchapter.

(d) If the employer, carrier, or administrator timely objects to the Form 23 *Application to Reinstatement of Disability Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 23 *Application to Reinstatement of Disability Compensation* unless the time is extended for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view toward conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the foregoing, the employee may waive the right to an informal hearing and proceed to a formal

hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*. Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0703 .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employee has the burden of producing evidence on the issue of the employee's application to reinstate compensation. If the Deputy Commissioner reverses an order previously granting a Form 23 *Application to Reinstatement of Disability Compensation* motion, the employer shall promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85. (e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order to that effect, that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary, within 30 days of the date of the Administrative Decision or Order. The effect of placing the case on the docket shall be the same as if the Form 23 *Application to Reinstatement of Disability Compensation* was denied, and compensation shall not be reinstated until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

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

SECTION .0500 – AGREEMENTS

04 NCAC 10A .0502 COMPROMISE SETTLEMENT AGREEMENTS

(a) The Commission shall not approve a compromise settlement agreement unless it contains the following information:

- (1) The employee knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act for the injury that is the subject of this agreement.
- (2) The employer, carrier or administrator will pay all costs incurred.
- (3) No rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released by this agreement.
- (4) The employee has, or has not, returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease.
- (5) Where the employee has not returned to a job or position at the same or a greater wage as was being earned prior to the injury or occupational disease, the employee has, or has not, returned to some other job or position, and, if so, the description of the particular job or position, the name of the employer, and the average weekly

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- wage earned. This Subparagraph does not apply where the employee or counsel certifies that partial wage loss due to an injury or occupational disease is not being claimed.
- (6) Where the employee has not returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease, a summary of the employee's age, educational level, past vocational training, past work experience, and any impairment, emotional, mental or physical, that predates the current injury or occupational disease. This Subparagraph does not apply upon a showing of:
- (A) unreasonable burden upon the parties;
 - (B) the employee is represented by counsel; or
 - (C) even if the employee is not represented by counsel, where the employee or counsel certifies that total wage loss due to an injury or occupational disease is not being claimed.
- (b) No compromise settlement agreement shall be considered by the Commission unless the following requirements are met:
- (1) The relevant medical, vocational, and rehabilitation reports known to exist, including those pertinent to the employee's future earning capacity, are submitted with the agreement to the Commission by the employer, carrier, administrator, or the attorney for the employer.
 - (2) The parties and all attorneys of record have signed the agreement.
 - (3) In a claim where liability is admitted or otherwise has been established, the employer, carrier, or administrator has undertaken to pay all medical expenses for the compensable injury to the date of the settlement agreement.
 - (4) The settlement agreement contains a list of all known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer, carrier, or administrator disputes, when the employer or insurer has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement.
 - (5) The settlement agreement contains a list of the unpaid medical expenses, if known, that will be paid by the employer, carrier, or administrator, if there are unpaid medical expenses that the employer or carrier has agreed to pay. The settlement agreement also contains a list of unpaid medical expenses, if known, that will be paid by the employee, if there are unpaid medical expenses that the employee has agreed to pay.
 - (6) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical expense will notify in writing the unpaid health care provider of the party's responsibility to pay the unpaid medical expense. Other unpaid health care providers will be notified in writing of the completion of the settlement by the party specified in the settlement agreement:
 - (A) when the employee's attorney has notified the unpaid health care provider in writing under G.S. 97-90(e) not to pursue a private claim against the employee for the costs of medical treatment, or
 - (B) when the unpaid health care provider has notified in writing the employee's attorney of its claim for payment for the costs of medical treatment and has requested notice of a settlement.
 - (7) Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement agreement does not require payment of any medical expense in excess of the maximum allowed under G.S. 97-26.
 - (8) The settlement agreement contains a finding that the positions of the parties to the agreement are reasonable as to the payment of medical expenses.
- (c) When a settlement has been reached, the written agreement shall be submitted to the Commission upon ~~execution~~ in accordance with Rule .0108 of this Subchapter. All compromise settlement agreements shall be directed to the Office of the Executive Secretary for review or distribution for review in accordance with Paragraphs (a) and (b) ~~(a) through (c)~~ of Rule .0609 of this Subchapter.
- (d) Once a compromise settlement agreement has been approved by the Commission, the employer, carrier, or administrator shall furnish an executed copy of the agreement to the employee's attorney of record or the employee, if unrepresented.
- (e) An attorney seeking fees in connection with a Compromise Settlement Agreement shall submit to the Commission a copy of the fee agreement with the client.

Authority G.S. 97-17; 97-80(a); 97-82.

SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES

04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES

- (a) ~~Motions and responses~~ before a Deputy Commissioner:
- (1) in cases that are currently calendared for hearing before a Deputy Commissioner shall be ~~sent by the filing party directly to the assigned Deputy Commissioner, filed in accordance with Rule .0108 of this Subchapter.~~
 - (2) to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be ~~directed by the filing party addressed~~ to the Deputy Commissioner who authored the Opinion and ~~Award~~ Award

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and filed in accordance with Rule .0108 of this Subchapter.

(b) ~~Motions and responses shall be sent by the filing party directly to the Office of the Executive Secretary. Secretary in accordance with Rule .0108 of this Subchapter.~~

- (1) when a case is not calendared before a Deputy Commissioner;
- (2) once a case has been continued or removed from a Deputy Commissioner calendar; or
- (3) after the filing of an Opinion and Award when the time for taking appeal has run.

(c) ~~Motions and responses before the Full Commission:~~

- (1) ~~in cases calendared for hearing before the Full Commission shall be sent by the filing party directly addressed to the Chair of the Full Commission panel. panel and filed in accordance with Rule .0108 of this Subchapter.~~
- (2) ~~filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the case shall be directed by the filing party addressed to the Chair of the Commission. Commission and filed in accordance with Rule .0108 of this Subchapter.~~
- (3) ~~in cases continued from the Full Commission hearing docket, shall be directed by the filing party addressed to the Chair of the panel of Commissioners who ordered the continuance. continuance and filed in accordance with Rule .0108 of this Subchapter.~~
- (4) ~~filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of appeal to the Court of Appeals shall be sent by the filing party directly addressed to the Commissioner who authored the Opinion and Award. Award and filed in accordance with Rule .0108 of this Subchapter.~~

(d) ~~Motions and responses thereto shall include a caption containing the Industrial Commission file number(s), party names, and a title identifying the nature of the motion or response. Motions and responses set forth in the body of electronic mail correspondence or contained in a brief shall not be accepted for filing by the Commission. This Paragraph does not apply to parties without legal representation.~~

(f)(e) A motion shall state with particularity the grounds on which it is based, the relief sought, and the opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing parties if not represented.

(e)(f) Motions to continue or remove a case from the hearing calendar on which the case is set shall be made as much in advance as possible of the scheduled hearing and may be made in written or oral form. In all cases, the moving party shall provide the basis for the motion and state that the other parties have been advised of the motion and relate the position, if known, of the other parties regarding the motion. Oral motions shall be followed with a written motion from the moving party.

(f)(g) The responding party to a motion shall have 10 days after a motion is served during which to file and serve copies of response in opposition to the motion. The Commission may

shorten or extend the time for responding to any motion in the interests of justice or to promote judicial economy.

(g)(h) A party who has not received actual notice of a motion or who has not filed a response at the time action is taken and who is adversely affected by the action may request that it be reconsidered, vacated, or modified. Motions shall be determined without oral argument, unless the Commission determines that oral argument is necessary for a complete understanding of the issues.

(h)(i) Where correspondence relative to a case before the Commission is sent to the Commission, copies of such correspondence shall be contemporaneously sent by the same method of transmission to the opposing party or, if represented, to opposing counsel. Written communications, whether addressed directly to the Commission or copied to the Commission, may not be used as an opportunity to introduce new evidence or to argue the merits of the case, with the exception of the following:

- (1) written communications, such as a proposed order or legal memorandum, prepared pursuant to the Commission's instructions;
- (2) written communications relative to emergencies, changed circumstances, or scheduling matters that may affect the procedural status of a case such as a request for a continuance due to the health of a litigant or an attorney;
- (3) written communications sent to the tribunal with the consent of the opposing lawyer or opposing party, if unrepresented; and
- (4) any other communication permitted by law or the Rules of the Commission.

(i)(j) All motions and responses thereto shall include a proposed Order in Microsoft Word format to be considered by the Commission.

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

04 NCAC 10A .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. Motions and responses shall be submitted contemporaneously to the Commission and the opposing party or opposing party's counsel, if represented.

(b) Following receipt of a notice of hearing before a Deputy Commissioner on a medical motion or appeal, the parties shall submit all subsequent filings and communications electronically directly to the Deputy Commissioner assigned.

(c) 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 with the Docket Director at dockets@ic.nc.gov in accordance with Rule .0108 of the Subchapter and send a copy of the notice to all other counsel and all unrepresented parties involved in the proceeding.

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(d) 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) a statement of the treatment or relief requested;
- (8) 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) 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) a statement of the time-sensitive nature of the request, if any;
- (11) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiners, and second opinion examiners;
- (12) 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) a representation that informal means of resolving the issue have been attempted in good

faith, and the opposing party's position, if known; and

- (14) a proposed ~~Order~~ Order in Microsoft Word format.

(e) 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 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;
- (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) 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) an explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention;
- (8) 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) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiner, and second opinion examiners;
- (10) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known;
- (11) documents known and in the possession of the movant relevant to the request, including relevant medical records; and
- (12) a proposed ~~Order~~ Order in Microsoft Word format.

(f) 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) 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 submitting filing notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. 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

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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) Depositions, if requested by the parties or ordered by the Deputy Commissioner, shall be taken in accordance with Rule .0612 of this Subchapter 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 submitted to 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) A party may appeal the decision of a Deputy Commissioner filed pursuant to G.S. 97-25(f)(2) by giving filing notice of appeal to the Full Commission within 15 calendar days of receipt of the decision. ~~decision in accordance with Rule .0108 of this Subchapter.~~ A letter expressing a n i t e n t 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 ~~Docket Section 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.

(j) 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 submitting filing notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal the Chief Deputy Commissioner 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 t h a t t h e l e t t e r s p e c i f i c a l l y i d e n t i f i e s t h e O r d e r f r o m 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) ~~The Commission shall accept the filing of documents by non-electronic methods if electronic transmission is unavailable to the party. 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.~~

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

04 NCAC 10A .0610 PRE-TRIAL AGREEMENT

(a) A Pre-Trial Agreement shall be signed by the attorneys and ~~submitted to the Commissioner or Deputy Commissioner before whom the case is pending 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; ~~docket and filed in accordance with Rule .0108 of this Subchapter, and the~~ The Commissioner or Deputy Commissioner shall order the case returned to the hearing as if a Request for Hearing had been filed on the date of the Order to return the case to the hearing docket. No new Form 33 *Request that Claim be Assigned for Hearing* is required.

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

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

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

04 NCAC 10A .0613 EXPERT WITNESSES AND FEES

(a) The parties shall file with the Deputy Commissioner or ~~Commission Commissioner in accordance with Rule .0108 of this Subchapter~~ within 15 days following the hearing, a list identifying all expert witnesses to be deposed and the deposition dates unless otherwise extended by the Commission in the interests of justice and judicial economy.

(b) After the deposition of each expert, the party that noticed the deposition shall, within 10 days after receiving the expert's fee invoice, ~~submit to file with the Deputy Commissioner or Commissioner, via email, Commissioner in accordance with Rule .0108 of this Subchapter~~ a request to approve the costs related to the expert deposition. In these requests, the party shall provide to the ~~Deputy Commissioner or Commissioner,~~ in a cover letter along with the invoice (if available), the following:

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- (1) the name of the expert and the expert's practice;
- (2) the expert's fax number;
- (3) the expert's area of specialty and board certifications, if any;
- (4) the length of the deposition;
- (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with parties' counsel;
- (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an exceptional, unique, or complex injury or disease;
- (7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be deposed at employer's expense; and
- (8) the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice name and fax number under the "Appearances" section. The proposed Order shall also reflect the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

(c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this Rule shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for the deposition, if applicable.

(d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an amount equal to 10 percent being added to the fee granted in the Order.

(e) A proposed fee for cancellation of a deposition within five days of a scheduled deposition may be submitted to be filed with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter for consideration and approval if in the interest of justice and judicial economy.

(f) This Rule applies to all expert fees for depositions; provided, however, either party may elect to reimburse a retained expert that did not treat or examine the employee the difference between the fee awarded by the Commission and the contractual fee of the expert.

Authority G.S. 97-26.1; 97-80(a); 97-80(d).

04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS

(a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel and all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney. No direct contact or communication concerning contested matters may be made with a represented party by the opposing party or any person on its behalf, without the attorney's permission except as permitted by G.S. 97-32 or other applicable law.

(b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with the Commission, in writing a Motion to Withdraw that contains a

statement of reasons for the request and that the request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known address of the client and shall include this information in the motion. A Motion to Withdraw before an award is made shall state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of compensation is made or approved.

(c) An attorney may withdraw from representation only by written order of the Commission. The issuance of an award of the Commission does not release an attorney as the attorney of record.

(d) An attorney withdrawing from representation whose client wishes to appeal an Order, Decision, or Award to the Full Commission shall timely file a notice of appeal, as set out by this Subchapter, on behalf of his or her client either before or with his or her Motion to Withdraw.

(e) Motions to Withdraw shall be submitted electronically to attorneywithdrawals@ic.nc.gov, unless electronic submission is unavailable to the parties in accordance with Rule .0108 of this Subchapter. The Motion to Withdraw shall include a proposed Order in Microsoft Word format that includes, in the appearances, the last known address of any pro se party, or the contact information of new counsel, if such counsel has been retained. The proposed Order shall include fax numbers for all parties, if known.

Authority G.S. 97-80(a); 97-90; 97-91.

TITLE 09 – OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g, that the Office of Information Technology Services intends to amend the rules cited as 09 NCAC 06B .1302, .1304, .1402, and readopt without substantive changes the rules cited as 09 NCAC 06B .0301, .0302, .0314-.0316, .0405, .0701, and .0901.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.its.state.nc.us/ITProcurement/Rules/Default.asp>

Proposed Effective Date: January 1, 2016

Public Hearing:

Date: November 19, 2016

Time: 10:00 a.m.

Location: Office of Information Technology Services, 3900 Wake Forest Road, Raleigh, NC 27619

Reason for Proposed Action:

Readoption without substantive changes:

09 NCAC 06B .0301 - Describes procurement procedures to be followed by the purchasing agency.

Regulatory Impact Analysis
Codification of and/or changes to filing requirements
Updated by agency: September 9, 2015

Agency: North Carolina Industrial Commission
Contact: Meredith Henderson – (919) 807-2575
Proposed New Rule Title: Electronic Filings with the Commission; How to File, 04 NCAC 10A .0108
Rules proposed for amendment: Rule 04 NCAC 10A .0101
Rule 04 NCAC 10A .0404
Rule 04 NCAC 10A .0405
Rule 04 NCAC 10A .0502
Rule 04 NCAC 10A .0609
Rule 04 NCAC 10A .0609A
Rule 04 NCAC 10A .0610
Rule 04 NCAC 10A .0613
Rule 04 NCAC 10A .0617
(See proposed rule text in Appendix 1)

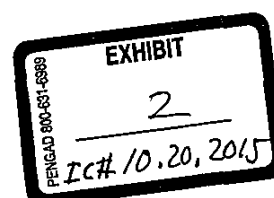
State Impact: Yes
Local Impact: Yes
Substantial Economic Impact: Yes

Statutory Authority: G.S. §§ 97-80(a)

Introduction/Background:

The Industrial Commission's rules give specific direction in a few places about how to file certain kinds of documents. There is no guidance in the rules for the bulk of the documents filed with the Commission. The Commission has been somewhat successful in communicating desired filing methods by providing information on its website, in its correspondence, and at educational events. However, many documents are still filed with the wrong office or person. The Commission has also offered and requested electronic filing of documents for several years via information campaigns. While most documents are now filed electronically, many are still 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 has been very efficient for users inside the Commission and has increased filing and processing accuracy. The Commission has also received positive feedback from the external users of EDPF. However, even for the documents that can be filed via EDPF, the Commission has not been able to achieve high compliance rates with information campaigns alone.



Based on the efficiencies of EDPF, the Commission has recently undertaken programming efforts to expand the list of documents accepted via EDPF. The Commission also desires to make the use of EDPF mandatory for those documents that can be filed via EDPF. This goal is the primary purpose of the set of rules that are the subject of this fiscal note. For those documents that will not be able to be filed via EDPF by the proposed effective date due to programming limitations, the Commission also wants to provide clear direction regarding alternate electronic filing. These changes will require one new rule and minor changes to related existing rules.

There are also a few additional proposed rule changes summarized below related to document format and other issues which are not anticipated to create costs for state or local government or to have a substantial economic impact.

Proposed Rule Changes and Their Estimated Impact:

The proposed rule additions and changes include the following:

1. *Addition of comprehensive electronic filing rule – Rule 04 NCAC 10A .0108*

This new rule will mandate and describe the electronic filings requirements for all workers' compensation-related documents filed with the Commission. The filing methods will include EDPF and electronic mail. The rule will also disallow the filing of documents with individual employees at the Commission and disallow the filing of documents via multiple methods. Please note that the rule has an exception for parties without legal representation. Lastly, the rule will clarify the format for deposition transcripts submitted to the Commission.

a. Description of baseline situation:

Currently, directions regarding the filing of various documents are scattered throughout the rules with only some rules indicating a desired method of filing (mail, facsimile, electronic mail, etc.). The Commission's website also provides additional filing method information that is not in the rules, but does not provide it on one centralized webpage. The lack of clear and comprehensive directions regarding the filing location and method for documents results in additional time/resources spent by the filers trying to determine how and where to file documents and additional time/resources spent by Commission staff answering related calls, rerouting documents, tracking down documents, and wading through unnecessary multiple filings of the same misfiled document.

(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.

Despite the Commission's creation and promotion of electronic mail accounts related to particular types of filings or particular sections of the Commission (e.g., execsec@ic.nc.gov for the Executive Secretary's Office), some parties either do not use the designated e-mail address and continue to file via mail, facsimile, and/or e-mail accounts of individual Commission employees or they use the designated e-mail address but continue to carbon copy multiple individual employees at the Commission and sometimes send additional copies via mail and facsimile.

Prior to creating EDPF, the Commission promoted the use of electronic mail filing as the preferred method to avoid having to receive and scan paper filings. 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. An alternative method is to 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.

(2) EDPF baseline use:

EDPF requires users to register and receive an NCID. Users must review brief training materials regarding how to use EDPF. Documents are uploaded to EDPF 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 and click to confirm and submit. The user receives a receipt confirming the upload via e-mail.

EDPF is currently required for the filing of one type of document (Form 24 Application, Rule 04 NCAC 10A .0404) and users are complying. EDPF is also currently available for the filing of Compromise Settlement Agreements and Forms 21, 26, and 26A, but its use rate for these is relatively low compared to other filing methods. About 7% of Forms 21, 26, and 26A and about 25% of Compromise Settlement Agreements are currently submitted via EDPF. This low usage rate is due in large part to the current programming of EDPF which requires payment of the related fees at the time of upload or the use of a "Pay Later" function. The only methods allowed by the State Treasurer for payment are credit card and EFT, which are not practical for many users. The reprogramming efforts to expand the documents that can be uploaded via EDPF include reprogramming to allow the payment of related fees via other methods.

On the Commission side, staff members process documents submitted via EDPF 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. This procedure greatly reduces the time spent moving electronic documents around to get them into the claim file and the chances of misfiling.

(3) Deposition transcript format baseline:

Currently, deposition transcripts are often received in a condensed format with four pages of text on one page. The Deputy Commissioners and Commissioners find these difficult to review because the type is so small and navigating the document is difficult when it is enlarged to make the type bigger. This situation results in less efficient review of transcripts while in the process of preparing for hearings and writing case decisions.

b. Description of proposed solutions:

The proposed Rule 04 NCAC 10A .0108 will require one of two electronic filing methods, EDPF or electronic mail, for the various documents to be filed with the Commission. The proposed rule provides a list of document types that will be required to be uploaded via EDPF. It is the Commission's intention to expand the list of documents that must be filed via EDPF in the future and move more documents from electronic mail filing to EDPF to further streamline document filing at the Commission. For those documents that cannot yet be uploaded via EDPF on the effective date of the rule, the proposed rule provides clear direction regarding the use of electronic mail filing with a comprehensive list of the e-mail addresses to use and prohibitions against duplicate filings.

Both the Commission and its users will benefit from the filing of documents via EDPF for several reasons, but there is a cost to the Commission in staff and programming time to set up and then to maintain EDPF and a cost to users in terms of slightly increased time to file documents. The costs and benefits of the proposed electronic filing rules changes are estimated below.

The proposed solution for deposition transcript format in Rule 04 NCAC 10A .0108(b) is to require only one page of transcript per page. This can be achieved through a common word processing function that should not create a cost. Further, because the depositions will be electronically filed, increasing the number of pages in the documents should not result in any increased paper costs. Therefore, no economic impact analysis of this proposed change is included below.

c. Economic Impact:

(1) Costs to the State through the Commission:

The Commission is expending and will continue to expend funds to reprogram EDPF in accordance with the requirements of the proposed rule changes.

- Time period of the project: March-August 2014 and January – September 2015, plus ongoing maintenance and troubleshooting
- Salary funds expended to expand and reprogram EDPF:
 - One full-time programmer, 6 months, no benefits paid: \$80,080
 - Part of time of second programmer, 2 months, no benefits paid: \$2,723
- Opportunity Costs of Current Employees (note, there are no additional budgetary expenditures relate to these costs):
 - Value of part of time of business process analyst on staff, expressed in terms of the person's total compensation (salary and benefits, assuming social security, leave, and retirement and health benefits are about 51% of salary for state employees)¹ with varying hours over the course of project: \$39,000.
 - Value of 39 committee meeting hours for nine employees with salaries ranging from \$28,000 to \$109,000 with an average of \$44,000, or about \$67,000 in total compensation, creating an opportunity cost of approximately \$11,000. This estimate assumes that employees work 2,080 hours a year.
 - Two business requirements documents produced by committee for nine section heads to review and approve at two hours per section head, who have an average total compensation level of \$116,000 (based on salary of about \$77,000) equaling approximately \$1,000 in total cost.
 - Ongoing maintenance costs: The Commission's IT section indicates that no additional portion of any IT staff member's time will be required to maintain EDPF in working order due to the proposed rule changes.
- Other costs: Commission's IT department reports staff time as the only cost associated with building and maintaining EDPF. The electronic mail accounts listed in Rule 04 NCAC 10A .0108 cost \$6.25 per month each. Most of them already exist. The four that will need to be created will cost an additional \$25 a month, or \$300 a year.

(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

¹ NC Office of State Human Resources. "State of North Carolina: 2014 Compensation & Benefits Report." <http://www.oshr.nc.gov/Guide/CompWebSite/2014%20compensation%20&%20benefits%20report.pdf>

via EDPF and electronic mail under this rule. The State's third-party administrator will also file documents with the Commission via EDPF and electronic mail. 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.

- Costs associated with electronic mail filing:

Because most documents are filed with the Commission via electronic mail at this time, it is not anticipated that there will be a measurable cost to requiring all documents other than those filed via EDPF to be filed via electronic mail. It is assumed that some documents that are generated and kept in paper format will have to be scanned in order to be emailed and it is possible that some office processes will have to be rearranged, but it is not possible to estimate the related costs. It is also assumed that some of the time spent trying to determine where and how to file documents with the Commission and time and resources spent on postage and paper mailing and facsimile submission will be saved. It is not possible to estimate the related savings because there is no reliable information from which to project the number of paper and facsimile filings that would be replaced with electronic filings.

- Costs associated with EDPF filing:

Because EDPF 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 EDPF as opposed to via electronic mail. To estimate additional time that the State, as a filer, would expend on using the EDPF, attempts were made to gather information from law firms that utilize e-mail and EDPF currently to file documents with the Commission regarding the time difference to utilize them. Some law firms estimated between 1-2 minutes more and 5-10 minutes more per set of documents filed via EDPF 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 EDPF.

Based on this wide variation in responses, the Commission undertook a brief study of filing times using an experienced staff member to submit the same sets of documents via electronic mail and via EDPF in a test environment. The results for ten sets of documents indicated a 1:3 ratio, with an average of 1.5 minutes difference per filing (see Table A in Appendix 2). It should be noted that four out of the ten involved payment of a fee at the time of submission and those four took the longest because payment involves additional screens. Fee payment cannot be made via electronic mail and, therefore, would require the fee to be paid separately via mail, adding time to the overall transaction.

- The Commission received and uploaded to its electronic file vault a total of 620,106 documents between June 1, 2014 and May 31, 2015 (see Table B in Appendix 2). Of those, 16,795 were submitted via EDPF. It is estimated that 74,209 more documents would have been filed via EDPF during that 12-month period under the proposed rules than the current baseline, for a total of 91,004. If it is assumed that the 74,209 additional documents would have otherwise been filed via e-mail and that it takes an average of 1.5 minutes longer to file them via EDPF, the difference will total 1,855 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.² If it is assumed that the average state legal or administrative assistant who would be doing the EDPF filing is paid on average \$30.61 in total compensation,³ the cost of added time to state and local governments as filers would be about \$6,000.

As discussed above, electronic mail is a very common method for filing documents at the Commission already. In most cases, unless a user operates in a paper-heavy environment and would have to scan documents in order to e-mail them to the Commission, the proposed rule changes should not have a significant impact financially. While the Commission has good data on uploads via EDPF, it is not practical to determine how many of the documents uploaded to the electronic file came in via e-mail as opposed to fax or paper. Looking at Table B below, only the 374,080 documents uploaded to the electronic file via “scanning team” or “section scanning” could have possibly come in via paper mail or hard fax, but there is no accurate way to determine the correct proportion. Even if it is assumed that 25% of them came in via mail, it is difficult to estimate whether there is a cost difference between printing and mail and hard faxing these documents versus attaching them to e-mails, which could include some scanning, without information regarding the business processes of all the various filers.

² 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>

³ Bureau of Labor Statistics. Employer Costs per Hour Worked for Employees Compensation and Costs as a Percentage of Total Compensation: State and local government workers, by occupation and industry group, June 2015. <http://www.bls.gov/news.release/eeec.t04.htm>

(3) Costs to private sector filers:

There are potential costs to the private sector associated with the additional time of uploading via EDPF. If it is assumed that 74,209 additional documents would now be filed through EDPF (see section on addition costs to state associated with EDPF filings) and that it takes an average of 1.5 minutes longer to file these files, the difference will total 1,855 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. If it is assumed that the legal or administrative assistants who would be doing the EDPF filing are paid an hourly total compensation rate of \$24.16,⁴ the cost of added time to private sector filers would be about \$40,000.

The proposed new Rule 04 NCAC 10A .0108 may also involve additional time costs associated with the filing of deposition transcripts with the Commission by court reporters. Currently, transcripts are submitted by paper mail and/or by e-mail. Under the proposed rule, they will all be submitted via EDPF. Between June 1, 2014 and May 31, 2015, 2,020 depositions were uploaded to the electronic file vault by the Commission. As estimated below, if each filing takes 1.5 more minutes by EDPF than by e-mail, it is anticipated that the new rule will create an opportunity cost to court reporters of 50.5 hours in a year. Monetized using an hourly total compensation rate of \$24.16,⁵ for administrative staff, this would amount to about \$1,200.

(4) Benefits to the state through the Commission

The proposed rule changes will greatly 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 74,000 more documents are filed in a year via EDPF and they take 1.5 minutes less to upload per document, the savings to the Commission in opportunity cost can be monetized at about \$57,000 a year. This is assuming that the average state legal or administrative assistant who would be doing the EDPF uploading is paid on average \$30.61 in total compensation.
- 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. The amount of time

⁴ Ibid.

⁵ Bureau of Labor Statistics. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, goods-producing and service-providing industries, by occupational group, June 2015. <http://www.bls.gov/news.release/ceec.t09.htm>

Commission processing assistants spend handling these issues ranges from 12.5% and 75% of the work day, depending on the nature of the position. This averages out to about 25% of the work day for a total of 57 processing assistants. The new process is expected to cut this average down to 10% of the work day, saving the Commission an average of 68 hours a day. With an assumed average total compensation rate of \$30.61 per hour for administrative or legal assistants in state government, the opportunity cost savings would be about \$2,000 per day or \$520,000 per year.

- Reduced usage of in-house scanning department due to reduced number of documents filed on paper. This will save on scan cover sheets, time to complete cover sheets and pack documents into boxes for scanning, time and resources for scanning department to scan, time for each section to do quality control on scanned documents before recycling them. Additional savings will include cardboard boxes and storage space.
- Reduced in-section scanning by staff for documents that cannot be sent to scanning department due to time constraints.
- Costs for recycling and shredding services may also go down if fewer bins are required to be emptied per week.

(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:

- Improved information and clear directions regarding how and where to file documents with the Commission will save users time spent on the 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 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 68 hours a day the Commission saves. As stated earlier, administrative staff for the private sector are expected to make \$24.16 an hour in total compensation and public sector administrative staff are expected to make \$30.61. If we continue to assume that the private sector accounts for 89% of the filings and the public sector accounts for 11%, then private sector filers will save about \$367,000 a year and public sector filers will save \$59,000 a year.
- Postage, paper, and faxing costs will be saved due to electronic filing requirements.

- Any time or resources spent on filing duplicate copies of the same document will be saved.
- Users' customer service experience will improve based on the following:
 - (1) Commission staff will have 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.
 - (3) Documents previously filed on paper that had to be sent to the scanning department will be available in the electronic file right away.

2. *Amendments to existing rules in relation to proposed new rule 04 NCAC 10A .0108:*

To make the rest of the Commission's workers' compensation-related rules consistent with the proposed Rule 04 NCAC 10A .0108, certain existing rules are proposed to be amended. Some of these amendments remove electronic mail filing instructions for documents that will be submitted via EDFP and some add language referring users to the proposed Rule 04 NCAC 10A .0108. The baseline and proposed solution summaries above apply to these proposed changes. These rules include the following:

- a. Rule 04 NCAC 10A .0404
- b. Rule 04 NCAC 10A .0405
- c. Rule 04 NCAC 10A .0502
- d. Rule 04 NCAC 10A .0609
- e. Rule 04 NCAC 10A .0609A
- f. Rule 04 NCAC 10A .0610
- g. Rule 04 NCAC 10A .0613
- h. Rule 04 NCAC 10A .0617

Since the economic impact of these rule changes are directly related to the economic impact of the creation of the proposed rule 04 NCAC 10A .0108, the economic analysis was included in section 1.

3. *Amendment to existing rule related to filing documents with the Commission not specifically related to proposed new rule 04 NCAC 10A .0108:*

To clarify a rule regarding the filing of documents at the Commission's main office, the Commission proposed the following change:

Rule 04 NCAC 10A .0101 – clarifies that the rule applies to the Commission's main office and that documents not being filed electronically may be filed at the Commission's main office. The Commission is in the process of opening regional offices and this change will make clear where to file any hand-delivered documents. The Commission does not plan to allow in-person filings at its regional offices.

4. *Amendments to existing rules unrelated to electronic filing with the Commission:*

- a. Rule 04 NCAC 10A .0404(c) – This proposed change would remove the requirement that employers and insurers serve employees with Form 24 Applications via certified mail, return receipt requested. The rule previously allowed service by regular mail. Since the change to certified mail went into effect, many Form 24 Applications have been returned as “refused” or “unclaimed” even though they are sent to the address at which the employee is receiving disability checks. The requirement for certified mail service is creating delay in the processing of Form 24 Applications. This rule change would save employers and insurers’ certified mail and return receipt costs of \$6.25⁶ on about 800 Form 24 Applications a year for a total of \$5,000. If we continue to assume that the share of these savings is about 11% for state/local government and about 89% for the private sector, the public sector will save about \$600 and the private sector filers will save about \$4,400.
- b. Rule 04 NCAC 10A .0404(i) – This proposed change would remove the requirements that the Commission send decisions on Form 24 Applications to the non-prevailing party via certified mail if the non-prevailing party is represented by counsel. If a party is represented by counsel, the Form 24 decision is already faxed to counsel on the day of filing. The certified mail copy is duplicative and is a cost to the Commission (and thus to the State) of about \$2,750 a year (800 Form 24 decisions a year with no counsel multiplied by \$3.45 for certified mail⁷).
- c. Rule 04 NCAC 10A .0609(d) and (j) – the proposed changes would require that litigants use formal motion format with case captions when filing motions with the Commission. In recent years, motion filings have become increasingly informal, including many filed in the body of e-mails. The proposed changes would also require that the proposed orders already required by rule be submitted to the Commission in Microsoft Word format. Most parties do this, but some provide proposed orders in .pdf format, which cannot be edited by the hearing officer prior to signing. Neither of these changes are anticipated to result in costs to the Commission’s users as they merely require consistency with commonly used formats and practices.
- d. Rule 04 NCAC 10A .0609A(d)(14) and (e)(12) – The proposed changes would require that the proposed orders already required by rule be submitted to the Commission in Microsoft Word format. Most parties do this, but some provide proposed orders in .pdf format, which cannot be edited by the hearing officer prior to signing. These changes are not anticipated to result in costs to the Commission’s users as they merely require consistency with commonly used formats and practices.

⁶ US Postal Service, Price List effective May 31, 2015. <http://pc.usps.com/text/dmm300/Notice123.htm>

⁷ Ibid.

Summary of aggregate impact:

The monetized costs and benefits cited above total \$1,194,300 in the aggregate. Most of the immediate costs related to the proposed rules come from the opportunity costs to Commission staff in building out EDPF. The ongoing costs relate to the slight increase in time required to file documents via EDPF. The potential cost that the Commission is not able to estimate with any accuracy is the effect of requiring documents that have been filed by various methods to be filed by e-mail. The Commission believes it is reasonable to assume no significant impact from the e-mail requirement based on the ubiquity of electronic mail and scanning in public and private sector and the savings in postage, printing, and faxing costs. 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.

For future costs and net present value (NPV) calculated in Table 1. Summary of Impacts, it is assumed that public sector wages will grow at an annualized rate of 1%, based on previous trends, and that private sector wages will grow at the same rate as inflation calculated through CPI (Consumer Product Index),⁸ while NPV is calculated as of July 1, 2015 using a 7% discount rate.

⁸ IHS Connect. Regional Database. North Carolina Consumer Price Index (CPI) forecast, (units: 1982-84=100). Accessed July 9, 2015.

Table 1. Summary of Impacts

	FY2016	FY2017	FY2018	FY2019	FY2020
<u>Costs</u>					
State					
Reprogramming	\$ 122,000				
Committee Meetings	\$ 11,000				
Section Head Reviews	\$ 1,000				
Email Accounts	\$ 300	\$ 300	\$ 300	\$ 300	\$ 300
Added Filing Time Costs	\$ 6,000	\$ 6,000	\$ 6,000	\$ 7,000	\$ 7,000
Private					
Added Filing Time Costs	\$ 41,000	\$ 42,000	\$ 43,000	\$ 44,000	\$ 45,000
<u>Total Costs</u>	\$ 181,300	\$ 48,300	\$ 49,300	\$ 51,300	\$ 52,300
NPV of Costs	\$ 328,000				
<u>Benefits</u>					
State					
Mailing Costs Avoided	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000
Value of Time Saved	\$ 639,000	\$ 645,000	\$ 652,000	\$ 658,000	\$ 665,000
Private					
Mailing Costs Avoided	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000
Value of Time Saved	\$ 367,000	\$ 373,000	\$ 382,000	\$ 391,000	\$ 401,000
<u>Total Benefits</u>	\$ 1,013,000	\$ 1,025,000	\$ 1,041,000	\$ 1,056,000	\$ 1,073,000
NPV of Benefits	\$ 4,262,000				
<u>Total Impact</u>	\$ 1,194,300	\$ 1,073,300	\$ 1,090,300	\$ 1,107,300	\$ 1,125,300
<u>Net Impact</u>	\$ 831,700	\$ 976,700	\$ 991,700	\$ 1,004,700	\$ 1,020,700

Alternatives:

Alternatives to the proposed rule changes include maintaining the status quo, adopting rules that provide direction regarding the correct filing of documents but are permissive as to electronic filing, or adopting rules that require electronic filing but are permissive as to filing via EDFP.

If the Commission were to adopt rules that provided comprehensive directions regarding the proper electronic filing of various documents but that did not require electronic filing, the benefits in terms of time saved for Commission staff and external users would be greatly reduced. While the rules would help external users determine where to file documents and therefore potentially reduce telephone calls to the Commission, it would be unlikely to cut down on duplicate filings or mislabeling or to increase the usage of electronic filing methods, particularly EDFP, to an extent that would make the processing of filed documents more efficient for Commission staff.

If the Commission were to adopt rules that required electronic filing and provided direction regarding EDFP filing but did not require it, some benefits would be realized in terms of a large reduction in paper and fax filings, a large reduction in duplicate filings, and a reduction in telephone calls regarding how to file documents. However, unless EDFP usage increased, the Commission would not capture the benefits of reduced time to upload documents or the benefits of fewer misfiled documents or documents needing rerouting.

In terms of opportunity costs, if EDFP use did not increase without a mandate, the Commission would be unlikely to reap the \$57,000 annual benefit estimated above for the requirement of EDFP, which is then passed on to external users as improved turnaround times and customer service. However, external users would not have the \$46,000 in added cost to file via EDFP. Court reporting services would also not have the added \$1,200 cost of filing deposition transcripts via EDFP.

Without a mandate for electronic mail filing, the Commission would reap something less than the \$520,000 cost savings estimated for reducing the time spent on document filing issues from 25% to 10%. It is difficult to estimate what percentage of time would be saved by a rule that gave comprehensive directions for filing but did not mandate electronic filing. If only 5% of the processing assistants' time is saved, the savings is reduced to \$173,000. If only 10% is saved, the savings is reduced to \$347,000. If the external users' time savings mirror that of the Commission as discussed above, the potential reductions in time savings will also be similar.

Other areas in which less savings would be realized include reduced usage of in-house scanning department and related preparation of documents for scanning, reduced cardboard boxes and storage space, reduced in-section scanning by staff for documents that cannot be sent to scanning department due to time constraints, and reduced costs for recycling and shredding services.

Any reductions in potential time and resource savings based on alternative, less stringent rules will result in less improvement in external users' customer service experience, turnaround times for matters filed with the Commission, and the immediate availability of filed documents in the electronic file.

Risk Analysis:

There are two main calculations that are based on assumptions/estimates that may not hold to be true. The first one is the increased time to file. The increased time to file via EDFP was estimated by employees inside of the Commission who have experience and knowledge of EDFP and e-mail filing and comparatively small numbers of filings were tested. Therefore, the average increased time per filing via EDFP may change. Table 2 below shows how the NPV of Costs would change if that assumption were to change.

Table 2. Sensitivity Analysis for Additional Time to Filing Process

Added Time to File	NPV of Costs
0 Minutes	\$ 131,000
.5 Minute	\$ 196,000
1 Minute	\$ 261,000
1.5 Minutes	\$ 328,000
2 Minutes	\$ 393,000
2.5 Minutes	\$ 460,000
3 Minutes	\$ 524,000

The second calculation is the total amount of time saved a day by the Commission through not having to spend as much time assisting filers or correcting as many filing errors, or the assumption that this amount of time is equal to the quantifiable amount of time saved by filers. The calculation was based on estimates by Commission employees of the percentage of time spent on these issues. There was no source of hard data from which to derive more solid estimates. Table 3 shows how the NPV of Benefits would change if the assumption of 68 hours saved per day would not hold.

Table 3. Sensitivity Analysis for Hours Saved a Day

Hours Saved a Day by the Commission and Filers	NPV of Benefits
0	\$265,000
20	\$1,433,000
40	\$2,602,000
60	\$3,771,000
68	\$4,262,000
80	\$4,940,000
100	\$6,109,000

APPENDIX 1

Proposed Rule Text

04 NCAC 10A .0101 **Location of Offices MAIN OFFICE and Hours of Business**

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

History Note: Authority G.S. 97-80(a);

Eff. January 1, 1990;

Amended Eff. January 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000.

04 NCAC 10A .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 which requires contemporaneous payment of a processing fee pursuant to Rule 04 NCAC 10E .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 and employers without legal representation. Claimants and employers without legal representation may file documents with the Commission via EDPF, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) All documents listed in Table 1 below shall be transmitted to the Commission via the Commission's Electronic Document Filing Portal ("EDFP"). Information regarding how to register for and use EDPF is available at <http://www.ic.nc.gov/training.html>. In the event EDPF is inoperable, all documents listed in Table 1 below shall be sent to the Commission via electronic mail to edfp@ic.nc.gov. Documents listed in Table 1 below which are sent to the Commission via electronic mail when EDPF is operable shall not be accepted for filing.

Table 1: Documents to be filed via EDPF

<u>Appeal of Administrative Order to Full Commission</u>
<u>Appeal of Medical Motion Order to Full Commission</u>
<u>Appeal of Opinion and Award of Deputy Commissioner</u>
<u>Appeal of Order of Executive Secretary (Non-Medical)</u>
<u>Attorney Representation Letter</u>
<u>Brief to the Full Commission</u>

<u>Brief or Contentions</u>
<u>Compromise Settlement Agreement</u>
<u>Confirmation of Scheduling of Mediation</u>
<u>Court of Appeals – Notice of Appeal</u>
<u>Deposition</u>
<u>Form 18M</u>
<u>Form 21</u>
<u>Form 23 Application</u>
<u>Form 23 Response</u>
<u>Form 23 Additional Documentation</u>
<u>Form 24 Application</u>
<u>Form 24 Response</u>
<u>Form 24 Additional Documentation</u>
<u>Form 26</u>
<u>Form 26A</u>
<u>Form 33</u>
<u>Form 33R</u>
<u>Form 44</u>
<u>MSC2</u>
<u>MSC4</u>
<u>MSC5</u>
<u>Pre-trial Agreement</u>
<u>Notice of Scheduled Mediation</u>

Transcripts of depositions shall be filed with the Commission pursuant to this Paragraph by the court reporting service. The transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The parties shall provide the court reporting service with the information necessary to effectuate electronic filing of the deposition transcripts and attached exhibits. 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.

(c) The workers' compensation forms listed in Table 2 below and all other documents to be filed with the Commission's Claims Administration Section shall be sent to the Commission via electronic mail to forms@ic.nc.gov.

Table 2: Forms to be filed via electronic mail to forms@ic.nc.gov

Form 18
Form 18B
Form 26D
Form 28
Form 28B
Form 28C
Form 28T
Form 29
Form 30
Form 30A
Form 30D
Form 31
Form 60
Form 61
Form 62
Form 63

(d) Motions, motion responses, and all other documents not referenced in Paragraphs (b) and (c) of this Rule shall be filed with the Commission via electronic mail in accordance with Subparagraphs (1) through (11) of this Paragraph:

- (1) Medical motions and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter shall be filed via electronic mail to medicalmotions@ic.nc.gov.
- (2) Motions or notices filed with the Office of the Executive Secretary pursuant to Rule .0609(b) of this Subchapter and any other documents to be filed with the Office of the Executive Secretary which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to execsec@ic.nc.gov.
- (3) Motions before a Deputy Commissioner filed pursuant to Rule .0609(a) of this Subchapter and any other documents to be filed with a Deputy Commissioner which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to deputy@ic.nc.gov.
- (4) Motions before the Full Commission filed pursuant to Rule .0609(c) of this Subchapter and any other documents to be filed with the Full Commission which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to fullcommission@ic.nc.gov.
- (5) Motions and any other documents to be filed with the Commission's Claims Administration Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to forms@ic.nc.gov.
- (6) Documents to be filed with the Commission's Docket Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to dockets@ic.nc.gov.

- (7) Documents to be filed with the Commission's Mediation Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to mediation@ic.nc.gov.
- (8) Documents to be filed with the Commission's Compliance & Fraud Investigative Division which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to fraudcomplaints@ic.nc.gov.
- (9) Documents to be filed with the Commission's Medical Fees Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to medicalfees@ic.nc.gov.
- (10) Documents to be filed with the Commission's Safety Education & Training Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to safety@ic.nc.gov.
- (11) Forms 25N to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent via electronic mail to 25n@ic.nc.gov. Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent via electronic mail to rehab.referrals@ic.nc.gov.
- (e) A one-year waiver shall be granted to a self-insured employer, carrier, third-party administrator, or law firm that notifies the Commission of its inability to comply with the electronic filing requirements in Paragraph (a) of this Rule due to a lack of the necessary internet technology resources. The notification shall indicate why the entity is unable to comply with the rule and outline its plan for coming into compliance within the one-year period. The notification shall be filed with the Office of the Clerk of the Commission via facsimile or U.S Mail.
- (f) A self-insured employer, carrier, third-party administrator, or law firm may apply to the Commission for an emergency temporary waiver of the electronic filing requirement in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems and/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.

*History Note: Authority G.S. 97-80(a); 97-81(a);
Eff. February 1, 2016.*

04 NCAC 10A .0404 TERMINATION AND SUSPENSION OF COMPENSATION

- (a) No application to terminate or suspend compensation shall be approved by the Commission without a formal hearing if the effect of the approval is to set aside the provisions of an award of the Commission.
- (b) When an employer, carrier, or administrator seeks to terminate or suspend temporary total disability compensation being paid pursuant to G.S. 97-29 for a reason other than those specified in G.S. 97-18(d) (payment without prejudice), G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only for claims arising on or after June 24, 2011)), the employer, carrier, or administrator shall notify the employee's attorney of record or the employee, if not represented, on Form 24, *Application to Terminate or Suspend Payment of Compensation*. This form requests:
- (1) the date of injury or accident and date the disability began;

- (2) the nature and extent of injury;
 - (3) the number of weeks compensation paid and the date range including from and to;
 - (4) the total amount of indemnity compensation paid to date;
 - (5) whether one of the following events has occurred:
 - (A) an agreement was approved by the Commission and the date;
 - (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
 - (C) an employer paid compensation to the employee without contesting the claim within the statutory period provided under G.S. 97-18(d); or
 - (D) any other event related to the termination or suspension of compensation;
 - (6) whether the application is made to terminate or suspend compensation and the grounds; and
 - (7) whether the employee is in managed care.
- (c) The employer, carrier, or administrator shall specify the grounds and the alleged facts supporting the application, and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 *Application to Terminate or Suspend Payment of Compensation* by inserting a date 17 days from the date the employer, carrier, or administrator serves the completed Form 24 *Application to Terminate or Suspend Payment of Compensation* on the employee's attorney of record by e-mail or facsimile, or the employee, if not represented, by ~~certified mail, return receipt requested~~, first class mail. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and attached documents shall be sent to the Commission via upload to the Electronic Document ~~Fee Filing Portal~~, Portal in accordance with Rule .0108 of this Subchapter, and shall be contemporaneously served on employee's counsel by e-mail or facsimile, or on the employee, if unrepresented, by ~~certified mail, return receipt requested~~, first class mail.
- (d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages of documents attached which are to be considered by the Commission. If the employee or the employee's attorney of record objects by the date inscribed on the employer's Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall set the case for an informal hearing, unless waived by the parties in favor of a formal hearing. The objection shall be filed in accordance with Rule .0108 and shall be accompanied by all currently available supporting documentation. A copy of any objection shall be contemporaneously served on the employer, carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant documentation received after the initial filing. The term "carrier" or "administrator" also includes any successor in interest in the pending claim.
- (e) If an employee does not object within the allowed time, the Commission shall review the Form 24 *Application to Terminate or Suspend Payment of Compensation* and any attached documentation, and an Administrative Decision and Order shall be rendered without an informal hearing as to whether there is a sufficient basis under the Workers' Compensation Act to terminate or suspend compensation, except as provided in Paragraph (g) of this Rule. Either party may seek review of the Administrative Decision and Order as provided by Rule ~~.0703~~ .0702 of this Subchapter.

(f) If the employee timely objects to the Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 24 *Application to Terminate or Suspend Payment of Compensation*, unless the time is extended for good cause shown. The informal hearing may be by telephone conference between the Commission and the parties or their attorneys of record. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the above, the employer, carrier, or administrator may waive the right to an informal hearing, and proceed to a formal hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*.

(g) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0703 .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employer has the burden of producing evidence on the issue of the employer's application for termination or suspension of compensation. If the Deputy Commissioner reverses an order previously granting a Form 24 *Application to Terminate or Suspend Payment of Compensation* motion, the employer, carrier, or administrator shall promptly resume compensation or otherwise comply with the Deputy Commissioners decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

(h) If the Commission is unable to reach a decision after an informal hearing, the Industrial Commission shall issue an order to that effect that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employer, carrier, or administrator shall within 30 days of the date of the Administrative Decision and Order file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary. The effect of placing the case on the docket shall be the same as if the Form 24 *Application to Terminate or Suspend Payment of Compensation* were denied, and compensation shall continue until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

(i) The Commission shall ~~mail any Administrative Decision and Order to the non-prevailing party by certified mail.~~ send a copy of the Administrative Decision and Order to a non-prevailing party who is without legal representation by certified mail.

(j) No order issued as a result of an informal Form 24 *Application to Terminate or Suspend Payment of Compensation* hearing shall terminate or suspend compensation retroactively to a date preceding the filing date of the Form 24 *Application to Terminate or Suspend Payment of Compensation*. Compensation may be terminated retroactively without a formal hearing where there is agreement by the parties, where allowed by statute, or where the employee is incarcerated. Otherwise, retroactive termination or suspension of compensation to a date preceding the filing of a Form 24 *Application to Terminate or Suspend Payment of Compensation* may be ordered as a result of a formal hearing. Additionally, nothing shall impair an employer's right to seek a credit pursuant to G.S. 97-42.

(k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

History Note: Authority G.S. 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a);

Eff. January 1, 1990;

Amended Eff. February 1, 2016; November 1, 2014; June 1, 2000; March 15, 1995.

04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION

(a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks reinstatement of compensation pursuant to G.S. 97-18(k), the employee may notify the employer, carrier, or administrator, and the employer's, carrier's, or administrator's attorney of record, on a Form 23 *Application to Reinstate Payment of Disability Compensation*, or by the filing of a Form 33 *Request that Claim be Assigned for Hearing*.

(b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstate Payment of Disability Compensation*, the original Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached documents shall be ~~sent to~~ filed with the Commission ~~at the same time and by the same method by which in~~ accordance with Rule .0108 of this Subchapter and a copy of the Form 23 and attached documents are contemporaneously sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The employee shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employer" portion of Form 23 *Application to Reinstate Payment of Disability Compensation* by inserting a date 17 days from the date the employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any. The Form 23 *Application to Reinstate Payment of Disability Compensation* shall specify the number of pages of documents attached that are to be considered by the Commission. Within 17 days from the date the employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any, the employer, carrier, or administrator shall complete Section B of the Form 23 *Application to Reinstate Payment of Disability Compensation* and ~~send file it to with the Commission in accordance with Rule .0108 of this Subchapter and send a copy~~ contemporaneously to the employee, or the employee's attorney of record, ~~at the same time and by the same method by which the form is sent to the Commission: record.~~

(c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review the Form 23 *Application to Reinstate Payment of Disability Compensation* and attached documentation and, without an informal hearing, render an Administrative Decision and Order as to whether there is sufficient basis under the

Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be rendered within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a response to the Form 23 *Application to Reinstate Payment of Disability Compensation*. Either party may seek review of the Administrative Decision and Order as provided by Rule ~~.0703~~ .0702 of this Subchapter.

(d) If the employer, carrier, or administrator timely objects to the Form 23 *Application to Reinstate Payment of Disability Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 23 *Application to Reinstate Payment of Disability Compensation* unless the time is extended for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view toward conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the foregoing, the employee may waive the right to an informal hearing and proceed to a formal hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*. Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule ~~.0703~~ .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employee has the burden of producing evidence on the issue of the employee's application to reinstate compensation. If the Deputy Commissioner reverses an order previously granting a Form 23 *Application to Reinstate Payment of Disability Compensation* motion, the employer shall promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

(e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order to that effect, that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary, within 30 days of the date of the Administrative Decision or Order. The effect of placing the case on the docket shall be the same as if the Form 23 *Application to Reinstate Payment of Disability Compensation* was denied, and compensation shall not be reinstated until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

History Note: Authority G.S. 97-18(k); 97-80(a);
 Eff. January 1, 1990;
 Amended Eff. February 1, 2016; November 1, 2014.

04 NCAC 10A .0502 COMPROMISE SETTLEMENT AGREEMENTS

(a) The Commission shall not approve a compromise settlement agreement unless it contains the following information:

- (1) The employee knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act for the injury that is the subject of this agreement.
- (2) The employer, carrier or administrator will pay all costs incurred.
- (3) No rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released by this agreement.
- (4) The employee has, or has not, returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease.
- (5) Where the employee has not returned to a job or position at the same or a greater wage as was being earned prior to the injury or occupational disease, the employee has, or has not, returned to some other job or position, and, if so, the description of the particular job or position, the name of the employer, and the average weekly wage earned. This Subparagraph does not apply where the employee or counsel certifies that partial wage loss due to an injury or occupational disease is not being claimed.
- (6) Where the employee has not returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease, a summary of the employee's age, educational level, past vocational training, past work experience, and any impairment, emotional, mental or physical, that predates the current injury or occupational disease. This Subparagraph does not apply upon a showing of:
 - (A) unreasonable burden upon the parties;
 - (B) the employee is represented by counsel; or
 - (C) even if the employee is not represented by counsel, where the employee or counsel certifies that total wage loss due to an injury or occupational disease is not being claimed.

(b) No compromise settlement agreement shall be considered by the Commission unless the following requirements are met:

- (1) The relevant medical, vocational, and rehabilitation reports known to exist, including those pertinent to the employee's future earning capacity, are submitted with the agreement to the Commission by the employer, carrier, administrator, or the attorney for the employer.
- (2) The parties and all attorneys of record have signed the agreement.
- (3) In a claim where liability is admitted or otherwise has been established, the employer, carrier, or administrator has undertaken to pay all medical expenses for the compensable injury to the date of the settlement agreement.
- (4) The settlement agreement contains a list of all known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer, carrier, or administrator disputes, when the employer or insurer has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement.

- (5) The settlement agreement contains a list of the unpaid medical expenses, if known, that will be paid by the employer, carrier, or administrator, if there are unpaid medical expenses that the employer or carrier has agreed to pay. The settlement agreement also contains a list of unpaid medical expenses, if known, that will be paid by the employee, if there are unpaid medical expenses that the employee has agreed to pay.
- (6) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical expense will notify in writing the unpaid health care provider of the party's responsibility to pay the unpaid medical expense. Other unpaid health care providers will be notified in writing of the completion of the settlement by the party specified in the settlement agreement:
- (A) when the employee's attorney has notified the unpaid health care provider in writing under G.S. 97-90(e) not to pursue a private claim against the employee for the costs of medical treatment, or
- (B) when the unpaid health care provider has notified in writing the employee's attorney of its claim for payment for the costs of medical treatment and has requested notice of a settlement.
- (7) Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement agreement does not require payment of any medical expense in excess of the maximum allowed under G.S. 97-26.
- (8) The settlement agreement contains a finding that the positions of the parties to the agreement are reasonable as to the payment of medical expenses.
- (c) When a settlement has been reached, the written agreement shall be submitted to the Commission upon ~~execution~~ execution in accordance with Rule .0108 of this Subchapter. All compromise settlement agreements shall be directed to the Office of the Executive Secretary for review or distribution for review in accordance with Paragraphs ~~(a) and (b)~~ (a) through (c) of Rule .0609 of this Subchapter.
- (d) Once a compromise settlement agreement has been approved by the Commission, the employer, carrier, or administrator shall furnish an executed copy of the agreement to the employee's attorney of record or the employee, if unrepresented.
- (e) An attorney seeking fees in connection with a Compromise Settlement Agreement shall submit to the Commission a copy of the fee agreement with the client.

History Note: Authority G.S. 97-17; 97-80(a); 97-82;

Eff. January 1, 1990;

Amended Eff. February 1, 2016; November 1, 2014; August 1, 2006; June 1, 2000; March 15, 1995.

04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES

(a) Motions and responses before a Deputy Commissioner:

- (1) in cases that are currently calendared for hearing before a Deputy Commissioner shall be ~~sent by the filing party directly to the assigned Deputy Commissioner~~ filed in accordance with Rule .0108 of this Subchapter.

- (2) to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be ~~directed by the filing party~~ addressed to the Deputy Commissioner who authored the Opinion and Award. Award and filed in accordance with Rule .0108 of this Subchapter.
- (b) Motions and responses shall be ~~sent by the filing party directly to~~ filed with the Office of the Executive ~~Secretary. Secretary in accordance with Rule .0108 of this Subchapter.~~
- (1) when a case is not calendared before a Deputy Commissioner;
- (2) once a case has been continued or removed from a Deputy Commissioner calendar; or
- (3) after the filing of an Opinion and Award when the time for taking appeal has run.
- (c) Motions and responses before the Full Commission:
- (1) in cases calendared for hearing before the Full Commission shall be ~~sent by the filing party directly~~ addressed to the Chair of the Full Commission panel. panel and filed in accordance with Rule .0108 of this Subchapter.
- (2) filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the case shall be ~~directed by the filing party~~ addressed to the Chair of the Commission. Commission and filed in accordance with Rule .0108 of this Subchapter.
- (3) in cases continued from the Full Commission hearing docket, shall be ~~directed by the filing party~~ addressed to the Chair of the panel of Commissioners who ordered the continuance. continuance and filed in accordance with Rule .0108 of this Subchapter.
- (4) filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of appeal to the Court of Appeals shall be ~~sent by the filing party directly~~ addressed to the Commissioner who authored the Opinion and Award. Award and filed in accordance with Rule .0108 of this Subchapter.
- (d) Motions and responses thereto shall include a caption containing the Industrial Commission file number(s), party names, and a title identifying the nature of the motion or response. Motions and responses set forth in the body of electronic mail correspondence or contained in a brief shall not be accepted for filing by the Commission. This Paragraph does not apply to parties without legal representation.
- (d)(e) A motion shall state with particularity the grounds on which it is based, the relief sought, and the opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing parties if not represented.
- (e)(f) Motions to continue or remove a case from the hearing calendar on which the case is set shall be made as much in advance as possible of the scheduled hearing and may be made in written or oral form. In all cases, the moving party shall provide the basis for the motion and state that the other parties have been advised of the motion and relate the position, if known, of the other parties regarding the motion. Oral motions shall be followed with a written motion from the moving party.
- (f)(g) The responding party to a motion shall have 10 days after a motion is served during which to file and serve copies of response in opposition to the motion. The Commission may shorten or extend the time for responding to any motion in the interests of justice or to promote judicial economy.

~~(e)~~(h) A party who has not received actual notice of a motion or who has not filed a response at the time action is taken and who is adversely affected by the action may request that it be reconsidered, vacated, or modified. Motions shall be determined without oral argument, unless the Commission determines that oral argument is necessary for a complete understanding of the issues.

~~(h)~~(i) Where correspondence relative to a case before the Commission is sent to the Commission, copies of such correspondence shall be contemporaneously sent by the same method of transmission to the opposing party or, if represented, to opposing counsel. Written communications, whether addressed directly to the Commission or copied to the Commission, may not be used as an opportunity to introduce new evidence or to argue the merits of the case, with the exception of the following:

- (1) written communications, such as a proposed order or legal memorandum, prepared pursuant to the Commission's instructions;
- (2) written communications relative to emergencies, changed circumstances, or scheduling matters that may affect the procedural status of a case such as a request for a continuance due to the health of a litigant or an attorney;
- (3) written communications sent to the tribunal with the consent of the opposing lawyer or opposing party, if unrepresented; and
- (4) any other communication permitted by law or the Rules of the Commission.

~~(h)~~(j) All motions and responses thereto shall include a proposed Order in Microsoft Word format to be considered by the Commission.

History Note: Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91;

Eff. January 1, 1990;

Amended Eff. February 1, 2016; November 1, 2014; June 1, 2000; March 15, 1995.

04 NCAC 10A .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. Motions and responses shall be submitted contemporaneously to the Commission and the opposing party or opposing party's counsel, if represented.

(b) Following receipt of a notice of hearing before a Deputy Commissioner on a medical motion or appeal, the parties shall submit all subsequent filings and communications electronically directly to the Deputy Commissioner assigned.

(c) 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 ~~with the Docket Director at doctors@ic.nc.gov~~ in accordance with Rule .0108 of this Subchapter and send a copy of the notice to all other counsel and all unrepresented parties involved in the proceeding.

(d) 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) a statement of the treatment or relief requested;
- (8) 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) 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) a statement of the time-sensitive nature of the request, if any;
- (11) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiners, and second opinion examiners;
- (12) 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) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known; and
- (14) a proposed ~~Order~~ Order in Microsoft Word format.

(e) 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 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;

- (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) 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) an explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention;
 - (8) 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) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiner, and second opinion examiners;
 - (10) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known;
 - (11) documents known and in the possession of the movant relevant to the request, including relevant medical records; and
 - (12) a proposed Order. Order in Microsoft Word format.
- (f) 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) 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 submitting filing notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. 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) Depositions, if requested by the parties or ordered by the Deputy Commissioner, shall be taken in accordance with Rule .0612 of this Subchapter 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 ~~submitted to~~ 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) A party may appeal the decision of a Deputy Commissioner filed pursuant to G.S. 97-25(f)(2) by giving filing notice of appeal to the Full Commission within 15 calendar days of receipt of the ~~decision~~ 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 ~~Docket Section~~ 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.

(j) 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 submitting filing notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal the Chief Deputy Commissioner 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) ~~The Commission shall accept the filing of documents by non-electronic methods if electronic transmission is unavailable to the party.~~ Claimants and employers without legal representation are not required to file documents via electronic transmission and may file documents with the Commission via EDPF, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

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

Eff. January 1, 2011;

Amended Eff. February 1, 2016; November 1, 2014.

04 NCAC 10A .0610 PRE-TRIAL AGREEMENT

(a) A Pre-Trial Agreement shall be signed by the attorneys and ~~submitted to the Commissioner or Deputy Commissioner before whom the case is pending~~ 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~~; docket and filed in accordance with Rule .0108 of this Subchapter, and the ~~The~~ Commissioner or Deputy Commissioner shall order the case returned to the hearing as if a Request for Hearing had been filed on the date of the Order to return the case to the hearing docket. No new Form 33 *Request that Claim be Assigned for Hearing* is required.

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

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

History Note: Authority G.S. 97-80(a); 97-80(b); 97-83;

Eff. January 1, 1990;

Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000; March 15, 1995.

04 NCAC 10A .0613 EXPERT WITNESSES AND FEES

(a) The parties shall file with the Deputy Commissioner or ~~Commission~~ Commissioner in accordance with Rule .0108 of this Subchapter within 15 days following the hearing, a list identifying all expert witnesses to be deposed and the deposition dates unless otherwise extended by the Commission in the interests of justice and judicial economy.

(b) After the deposition of each expert, the party that noticed the deposition shall, within 10 days after receiving the expert's fee invoice, ~~submit to file with the Deputy Commissioner or Commissioner, via email, Commissioner in accordance with Rule .0108 of this Subchapter~~ a request to approve the costs related to the expert deposition. In these requests, the party shall provide ~~to the Deputy Commissioner or Commissioner~~, in a cover letter along with the invoice (if available), the following:

- (1) the name of the expert and the expert's practice;
- (2) the expert's fax number;
- (3) the expert's area of specialty and board certifications, if any;
- (4) the length of the deposition;
- (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with parties' counsel;
- (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an exceptional, unique, or complex injury or disease;

(7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be deposed at employer's expense; and

(8) the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice name and fax number under the "Appearances" section. The proposed Order shall also reflect the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

(c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this Rule shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for the deposition, if applicable.

(d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an amount equal to 10 percent being added to the fee granted in the Order.

(e) A proposed fee for cancellation of a deposition within five days of a scheduled deposition may be ~~submitted to~~ filed with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter for consideration and approval if in the interest of justice and judicial economy.

(f) This Rule applies to all expert fees for depositions; provided, however, either party may elect to reimburse a retained expert that did not treat or examine the employee the difference between the fee awarded by the Commission and the contractual fee of the expert.

History Note: Authority G.S. 97-26.1; 97-80(a); 97-80(d);

Eff. January 1, 1990;

Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000.

04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS

(a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel and all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney. No direct contact or communication concerning contested matters may be made with a represented party by the opposing party or any person on its behalf, without the attorney's permission except as permitted by G.S. 97-32 or other applicable law.

(b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with the Commission, in writing a Motion to Withdraw that contains a statement of reasons for the request and that the request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known address of the client and shall include this information in the motion. A Motion to Withdraw before an award is made shall

state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of compensation is made or approved.

(c) An attorney may withdraw from representation only by written order of the Commission. The issuance of an award of the Commission does not release an attorney as the attorney of record.

(d) An attorney withdrawing from representation whose client wishes to appeal an Order, Decision, or Award to the Full Commission shall timely file a notice of appeal, as set out by this Subchapter, on behalf of his or her client either before or with his or her Motion to Withdraw.

(e) Motions to Withdraw shall be submitted ~~electronically to attorneywithdrawals@ic.nc.gov, unless electronic submission is unavailable to the parties.~~ in accordance with Rule .0108 of this Subchapter. The Motion to Withdraw shall include a proposed Order in Microsoft Word format that includes, in the appearances, the last known address of any pro se party, or the contact information of new counsel, if such counsel has been retained. The proposed Order shall include fax numbers for all parties, if known.

History Note: Authority G.S. 97-80(a); 97-90; 97-91;

Eff. January 1, 2011;

Amended Eff. February 1, 2016; November 1, 2014.

APPENDIX 2

Data Summary

Table A

Document	Action	# of Attachments	Total Size	EDFP Total Time	Email Time	EDFP Total – Email
Form 33	Submit	2	693 KB	2:20	0:48	1:32
Form 26A	Pay Now	3	929 KB	2:26	0:40	1:46
Form 44	Submit	2	1.51 MB	1:46	0:37	1:09
Clincher	Pay Now	5	9.74 MB	3:25	1:05	2:20
Brief	Submit	2	901 KB	1:23	0:39	0:44
Form 26A	Pay Later	5	6.42 MB	2:20	1:01	1:19
Clincher	Pay Now	5	1.6 MB	2:58	0:35	2:23
Form 24	Submit	5	2.18 MB	2:25	0:41	1:44
Clincher	Pay Now	5	14.2 MB	2:59	1:10	1:49
Form 33	Submit	3	249 KB	1:10	0:26	0:44

Table B

Upload Method	
Loaded by Scanning Team	93,778
Loaded by Section Scanning	280,302
Loaded by EDPF	16,795
Loaded by COMS/ Mainframe Interface	229,231
Total June 1 to May 31	620,106
EDFP Uploads	
Without new rules	16,795
Estimated new documents with new rules	74,209
Total EDPF after new rules	91,004