

**Regulatory Impact Analysis  
Notice by the Commission**

Agency: North Carolina Industrial Commission  
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Proposed New Rule Title: Notice by the Commission  
Rules proposed for amendment: Rule 11 NCAC 23B .0106  
(See proposed rule text in Appendix 1)

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

Statutory Authority: *G.S. §143-300.*

Overview:

The Commission proposes to establish a time certain for notice when service of a decision, order or other document (in other words, when service of anything other than a Full Commission Decision and Order) is provided via electronic mail in claims brought pursuant to the State Tort Claims Act. This Rule mirrors 11 NCAC 23A .0107, which has proven successful in establishing a time certain for notice in workers' compensation claims.

Baseline:

Currently, the Commission serves documents via email and U.S. Mail. While a Full Commission Decision and Order must be sent via registered or certified mail pursuant to N.C. Gen. Stat. § 143-293, other decisions (*i.e.*, a Deputy Commissioner Decision and Order) are only required to be sent in writing pursuant to N.C. Gen. Stat. § 143-292, which means that they can be sent via email.

Currently, Decisions and Orders from the Deputy Commissioner Section are sent via certified mail to prison inmates and other *pro se* parties. With the exception of Full Commission Decision and Orders, attorneys receive all orders and decisions via email.

Unlike 11 NCAC 23A .0107, this proposed Rule does not address the time certain for notice when service of a decision, order or other document is sent via mail because Rule 6 of the North Carolina Rules of Civil Procedure governs the calculation of time under these circumstances. The purpose of this Rule is solely to clarify the time for notice related to decisions, orders and other documents sent via email. This rule does not change the method of service for any documents sent by the Commission.

If an order is served via email, the time certain for notice is currently not clarified in the rule. For example, is notice via email received when received in the inbox, when the recipient clicks the read receipt, the day after the email is sent, or some other time? In order to calculate the

timeline for parties to file appeals, motions, or other responsive filings, the time certain for receipt of notice must be clearly defined.

Conclusion:

This Rule will have no effect on Commission funds because all documents will continue to be sent via the same method of service. The Rule will lead more certainty and could reduce communications between the Commission and parties and attorneys due to the establishment of a time certain. The only change for parties will be to change, or rather set, the beginning of the timeline for filing responsive motions, briefs, appeals, or any other action in response to a document served by the Commission. In other words, the clock may start one day earlier or later than a party would have guessed without the rule in place.

## APPENDIX 1

Rule 11 NCAC 23B .0106 is proposed for adoption as follows:

### **11 NCAC 23B .0106 NOTICE BY THE COMMISSION**

(a) If service is provided by electronic mail, “receipt of such notice” pursuant to G.S. 143-292 is complete one hour after it is sent by the Commission, provided that:

- (1) notice sent after 5:00 p.m. shall be complete at 8:00 a.m. the following State business day; and
- (2) notice sent by electronic mail that is not readable by the recipient is not complete. Within five State business days of receipt of an unreadable document, the receiving party shall notify the Commission of the unreadability of the document.

(b) If service shall be provided by electronic mail, notice of orders or other documents issued pursuant to G.S. 143-296 is complete in accordance with the same provisions set forth in Paragraph (a) of this Rule.

*History Note: Authority G.S. 143-300;*

*Eff. \_\_\_\_\_.*