

## **NOTICE OF PROPOSED INDUSTRIAL COMMISSION RULES**

**DATE: SEPTEMBER 15, 2015**

*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.*

These proposed rules were also published today in Volume 30, Issue 6, of the North Carolina Register at Page 593, available at <http://www.ncoah.com/rules/register/Volume%2030%20Issue%2006%20September%2015,%202015.pdf>.

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

**Oral comments on the proposed rules may be made at the Public Hearing before the Industrial Commission:**

**Date:** *October 20, 2015*

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

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

**Written comments on the proposed rules may be submitted to:** *Meredith Henderson, 4333 Mail Service Center, Raleigh, NC 27699-4333; phone (919) 807-2575; email [meredith.henderson@ic.nc.gov](mailto:meredith.henderson@ic.nc.gov)*

**The written 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.

**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.*

**Fiscal impact of the proposed rules (check all that apply).**

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

The approved fiscal note is available on the Industrial Commission website at <http://www.ic.nc.gov/proposedNCICEfilingRulesFiscalNote.html> and on the website of the Office of State Budget and Management at [http://osbm.nc.gov/files/pdf\\_files/NCIC08072015.pdf](http://osbm.nc.gov/files/pdf_files/NCIC08072015.pdf).

**Text of Proposed Rules:**

**CHAPTER 10 - INDUSTRIAL COMMISSION**

**SUBCHAPTER 10A - WORKERS' COMPENSATION RULES**

**SECTION .0100 – ADMINISTRATION**

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

The offices ~~main office~~ of the North Carolina Industrial Commission ~~are~~<sup>is</sup> 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](mailto: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](mailto:forms@ic.nc.gov).

Table 2: Forms to be filed via electronic mail to [forms@ic.nc.gov](mailto:forms@ic.nc.gov)

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

(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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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* 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 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.

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 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.

*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 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.

## 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 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.

(~~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.

### 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](mailto: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 [doekets@ic.nc.gov](mailto:doekets@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.

(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](mailto: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](mailto: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 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:

- (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.

*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.*