

1 4 NCAC 10H .0101 is proposed for amendment as follows:

2 **SUBCHAPTER 10H – RULES OF THE INDUSTRIAL COMMISSION RELATING TO THE LAW-**
3 **ENFORCEMENT OFFICERS’, FIREMEN’S, RESCUE SQUAD WORKERS’ AND CIVIL AIR PATROL**
4 **MEMBERS’ DEATH BENEFITS ACT**

5 **RULE 1. 4 NCAC 10H .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS. BUSINESS**

6 For purposes of this Subsection, the offices of the North Carolina Industrial Commission are located in the Dobbs
7 Building, 430 North Salisbury Street, in Raleigh, North Carolina. ~~The same office hours as are or may be observed~~
8 ~~by other State offices in Raleigh will be observed by the Industrial Commission.~~ Documents that are not being filed
9 electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed
10 electronically may be filed until 11:59 p.m. on the required filing date.

11 History Note: Authority G.S. 143-166.4

12 Amended Eff. January 1, 2013

1 4 NCAC 10H .0201 is proposed for amendment as follows:

2 **SECTION .0200 - RULES OF COMMISSION**

3 **RULE III. 4 NCAC 10H .0201 DETERMINATION OF CLAIMS BY THE INDUSTRIAL**
4 **COMMISSION. COMMISSION**

5 ~~1-~~ (a) Upon application ~~or request to the Industrial Commission~~ for an award under the provisions of the Law-
6 Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act, the
7 ~~Full Commission will~~ shall determine whether sufficient ~~information or~~ evidence is contained in the Commission's
8 workers' compensation or other files upon which to base an ~~Order~~ order for the payment of benefits. If the ~~Full~~
9 Commission is satisfied that such an ~~Order~~ order should be issued, it ~~will~~ shall, without conducting a ~~formal~~ hearing,
10 file an ~~appropriate Award~~ award directing the payment of benefits.

11 ~~The Full Commission, on joint request of the interested parties or for good cause shown, may in its discretion The~~
12 ~~Full Commission, order or approve a settlement for less than the maximum amount set forth in G.S. §143-166.3.~~

13 ~~2-~~ (b) If the ~~Full Commission~~ is of the opinion that ~~it~~ the Commission's workers' compensation or other files has
14 insufficient ~~information or~~ evidence ~~before it~~ upon which to base basis an award for the payment of benefits, ~~should~~
15 ~~be issued,~~ the ~~Full Commission will~~ shall place the case upon the Commission's hearing docket, ~~in the county where~~
16 ~~the incident giving rise to the death is alleged to have occurred. The case will thereafter be set for hearing before a~~
17 ~~Hearing Commissioner or Hearing Deputy Commissioner in such county or in such other county as the Full~~
18 ~~Commission may direct, due notice of the hearing being given to all parties and to the Attorney General of the State~~
19 ~~of North Carolina who may appear as amicus curiae.~~

20 ~~3-~~ The Hearing Commissioner or Hearing Deputy Commissioner before whom the case is set for hearing, in his
21 discretion, may order the parties to appear at a reasonable time and place for a pre trial hearing to determine such
22 matters as he deems necessary. ~~The Hearing Commissioner or Deputy Commissioner will, having received all~~
23 ~~evidence pertinent to the case, thereafter proceed to file a Decision and Award in the case in which benefits are~~
24 ~~awarded or denied. Such Decision will be sent to all parties.~~

25 ~~4-~~ The Commission may, of its own motion, order a rehearing of any case.

26 ~~5-~~ The Commission will give reasonable notice of hearing in every case. Postponement or continuance of a
27 scheduled hearing will rest entirely in the discretion of the Commission.

28 ~~6-~~ In all cases where it is suitable that infants or incompetents sue by their guardian ad litem, the Commission will
29 appoint such guardian ad litem upon the written application of a reputable disinterested person closely connected
30 with such infant or incompetent. ~~But, if such person will not apply, then, upon the like application of some~~
31 ~~reputable citizen; and the Commission will make such appointment only after due inquiry as to the fitness of the~~
32 ~~person to be appointed.~~

33 ~~7-~~ Any claimant who gives to the opposing party or an agent of that party a written or recorded statement of the
34 facts and circumstances surrounding his claim shall be furnished by the opposing party a copy of such statement
35 within ten days upon request. ~~Further, any claimant who has given such a statement shall, without request, be~~
36 ~~furnished by the opposing party a copy thereof immediately following a denial of his claim or no less than ten days~~
37 ~~prior to a pending hearing.~~

1 ~~Such copy shall be furnished at the expense of the party to whom the statement was given.~~
2 ~~If any party fails to comply with this rule, then an Order may be entered by the hearing officer prohibiting that party~~
3 ~~from introducing designated matters into evidence.~~
4 ~~8. In the absence of written notice of appeal from the Decision and Award filed in such a case by the Hearing~~
5 ~~Commissioner or Hearing Deputy Commissioner within fifteen days from receipt of such award, the award as filed~~
6 ~~will be binding on the parties.~~

7 History Note: Authority G.S. 143-166.4;
8 Amended Eff. January 1, 2013

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1 4 NCAC 10H .0202 is proposed for amendment as follows:

2 **4 NCAC 10H .0202 HEARINGS BEFORE THE COMMISSION**

3 ~~3-~~ (a) ~~The Hearing Commissioner or Hearing Commissioner or Deputy Commissioner before whom the~~
4 ~~case regarding the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol~~
5 ~~Members' Death Benefits Act is is set for hearing, shall order the parties to participate in a pre-trial~~
6 ~~conference. This conference shall be conducted at such place and by such method as the Commissioner or~~
7 ~~Deputy Commissioner deems appropriate, including conference telephone calls. in his discretion, may~~
8 ~~order the parties to appear at a reasonable time and place for a pre trial hearing to determine such matters as~~
9 ~~he deems necessary. The Hearing Commissioner or Deputy Commissioner will, having received all~~
10 ~~evidence pertinent to the case, thereafter proceed to file a Decision and Award in the case in which benefits~~
11 ~~are awarded or denied. Such Decision will be sent to all parties.~~

12 ~~4-~~ (b) ~~The Commission may, on its own motion, order a hearing or rehearing of any case in dispute. The~~
13 ~~Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the~~
14 ~~Commission.~~

15 ~~5-~~ (c) ~~The Commission will shall give reasonable notice of hearing in every case. Postponement or~~
16 ~~continuance of a scheduled hearing will shall be granted to prevent manifest injustice or to promote judicial~~
17 ~~economy. rest entirely in the discretion of the Commission.~~

18 (d) ~~Notice of the hearing shall be given to the Attorney General of the State of North Carolina, who may~~
19 ~~appear as amicus curiae.~~

20 History Note: *Authority* G.S. 143-166.4;

21 *Amended Eff.* January 1, 2013

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1 4 NCAC 10H .0203 is proposed for amendment as follows:

2 **4 NCAC 10H .0203 APPOINTMENT OF GUARDIAN AD LITEM**

3 ~~6. (a) In all cases where it is suitable that infants~~ Infants ~~or incompetents sue by~~ may bring an action under
4 this Subchapter only through their guardian ad litem; ~~the Commission will appoint such guardian ad litem~~
5 ~~upon the written application of a reputable disinterested person closely connected with such infant or~~
6 ~~incompetent. But, if such person will not apply, then, upon the like application of some reputable citizen;~~
7 ~~and the Commission will make such appointment only after due inquiry as to the fitness of the person to be~~
8 ~~appointed.~~ The Commission shall appoint a person as guardian ad litem if the Commission determines it to
9 be in the best interest of the infant or incompetent. The Commission shall appoint a guardian ad litem only
10 after due inquiry as to the fitness of the person to be appointed.

11 (b) No compensation due or owed to the infant or incompetent shall be paid directly to the guardian ad
12 litem.

13 (c) Consistent with G.S. 1A-1, Rule 17(b)(2), the Commission may assess a fee to be paid to an attorney
14 who serves as a guardian ad litem for actual services rendered upon receipt of an affidavit of actual time
15 spent in representation of the infant or incompetent.

16 History Note: Authority G.S. 1A-1 Rule 17(b)(2); 143-166.4;

17 Amended Eff. January 1, 2013

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1 4 NCAC 10H .0204 is proposed for amendment as follows:

2 **4 NCAC 10H .0204 WRITTEN OR RECORDED STATEMENT**

3 (a) Upon the request of the employer or his agent to take a written or a recorded statement, the employer or
4 his agent shall advise any person eligible for payments that the statement may be used to determine whether
5 the claim will be paid or denied. Any person eligible for payments who gives the employer, its carrier, or
6 any agent either a written or recorded statement of the facts and circumstances surrounding the decedent's
7 injury shall be furnished a copy of such statement within 45 days after request. Any person eligible for
8 payments shall immediately be furnished with a copy of the written or recorded statement following a
9 denial of the claim. A copy shall be furnished at the expense of the party to whom the statement was given.

10 (b) If any party fails to comply with this Rule, a Commissioner or Deputy Commissioner shall enter an
11 order prohibiting that party from introducing the statement into evidence or using any part of the statement.

12 *History Note:* Authority G.S. 143-166.4;

13 Amended Eff. January 1, 2013

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1 4 NCAC 10H .0205 is proposed for amendment as follows:

2 ~~IV. APPEAL TO THE FULL COMMISSION.~~ **4 NCAC 10H .0205 REVIEW BY THE FULL**
3 **COMMISSION**

4 ~~1. (a) In any case in which Decision is filed by Hearing Commissioner or Hearing Deputy Commissioner, appeal~~
5 ~~may be made to the Full Commission by giving written notice of appeal to the Commission within fifteen days from~~
6 ~~receipt of the Decision, with written statement of service of copy by mail or in person on opposing party or parties.~~
7 A party may request a review of an award filed by a Deputy Commissioner by filing a letter expressing a request for
8 review to the Full Commission within 15 days of receipt of the award. The award is binding on the parties if not
9 appealed.

10 ~~2. (b) Upon~~ After receipt of notice of appeal review, the Commission ~~will~~ shall supply to the appellant and to the
11 appellee a transcript of the record upon which ~~is based the Decision and the award is based and~~ from which ~~appeal a~~
12 review is being taken to the Full Commission. The appellant shall, within ten days of receipt of transcript of the
13 record, file with the Commission a written statement of the particular grounds for the appeal, with ~~written statement~~
14 ~~of service of copy by mail or in person on all opposing party or parties.~~

15 ~~(c) Particular grounds~~ Grounds for appeal review not set forth ~~will be~~ are deemed to be abandoned and argument
16 thereon ~~will~~ shall not be heard before the Full Commission.

17 ~~A nonappealing party is not required to file conditional assignments of error in order to preserve his rights for~~
18 ~~possible further appeals.~~

19 ~~3. (d) When an appeal a review~~ is made to the Full Commission, appellant's brief, if any, in support of his ground
20 for appeal shall be filed ~~in triplicate~~ with the Commission, with ~~written statement of service of copy by mail or in~~
21 ~~person on appellee all opposing parties~~ no less than ~~fifteen~~ 15 days prior to the hearing on ~~appeal.~~ review. Appellee
22 shall have five days in which to file a reply brief, if ~~any~~ deemed necessary, ~~in triplicate~~ with the Commission, with
23 ~~written statement of service of copy by mail or in person on all opposing party or parties.~~

24 ~~(e) Any motions by either party shall be filed in triplicate with the Full Commission, with written statement of~~
25 ~~service of copy by mail or in person on all opposing party or parties.~~

26 ~~4. No new evidence will be presented to or heard by the Full Commission.~~

27 ~~5. Ruling on a motion for a new hearing to take additional evidence will be governed by the general law of the State~~
28 ~~for the granting of new trials on the grounds of newly discovered evidence. Such motion must be written, supported~~
29 ~~by affidavit, and may be argued before the Full Commission at the time of the hearing on appeal.~~

30 ~~6. (f) The parties, or either of them, may waive oral argument before the Full Commission. Upon the request of a~~
31 ~~party, or its own motion, the Commission may waive oral arguments to prevent manifest injustice, to promote~~
32 judicial economy, or to expedite a decision in the public interest. In the event of such waiver, ~~a Decision~~ the Full
33 Commission shall file an award based on the record, exceptions, record and briefs. ~~briefs, if any, will be given by the~~
34 Full Commission.

35 History Note: Authority G.S. 143-166.4;

36 Amended Eff. January 1, 2013

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1 4 NCAC 10H .0206 is proposed for amendment as follows:

2 **4 NCAC 10H .0206** **SUSPENSION OF RULES**

3 To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except
4 as otherwise provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the
5 Rules in this Subchapter in a case pending before the Commission upon application of a party or upon its own
6 initiative, and may order proceedings in accordance with its directions.

7 History Note: Authority G.S. 143-166.4;

8 Eff. January 1, 2013

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1 4 NCAC 10H .0207 is proposed for amendment as follows:

2 **4 NCAC 10H .0207** **SANCTIONS**

3 (a) The Commission may, on its own initiative or motion of a party, impose a sanction against a party or attorney or
4 both when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this
5 Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the
6 North Carolina Rules of Civil Procedure.

7 (b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Law-
8 Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act may
9 result in fines or other sanctions.

10 History Note: Authority G.S. 1A-1, Rule 37; 143-166.4;

11 Eff. January 1, 2013.

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