

Judge James J. Booker, Commissioner
J. Randolph Ward, Commissioner
Thomas J. Bolch, Commissioner
Bernadine Ballance, Commissioner



James B. Hunt Jr., Governor
J. Howard Bunn, Jr., Chairman
Dianne Sellers, Commissioner
Coy Vance, Commissioner

North Carolina Industrial Commission

MINUTES
26 January 1995

Pursuant to the authority granted in N.C. Gen. Stat. 97-80(a) and the powers bestowed thereby, the North Carolina Industrial Commission hereby adopts the attached new and revised rules and new and revised forms for the further implementation of the Workers' Compensation Act, particularly as regards "The Workers' Compensation Reform Act of 1994."

J. HOWARD BUNN, JR.
CHAIRMAN

DIANNE C. SELLERS
COMMISSIONER

JAMES J. BOOKER
COMMISSIONER

THOMAS J. BOLCH
COMMISSIONER

J. RANDOLPH WARD
COMMISSIONER

BERNADINE S. BALLANCE
COMMISSIONER

COY M. VANCE
COMMISSIONER

JHB/nwm

Dobbs Building • 430 N. Salisbury Street • Raleigh, North Carolina 27611

Administration 733-4820	Commissioners 733-6721	Docket Department 733-5076	Medical Department 733-5055	Medical Services 733-3201	
Claims Department 733-5020	Deputy Commissioner 733-6721	Executive Secretary 733-4820	Occupational Disease 733-5020	Safety Department 733-5290	Statistics Department 733-5220

An Equal Opportunity/Affirmative Action Employer



Rule 103

Official Forms

(1) The Industrial Commission will supply, on request, forms identified by number and title as follows:

Form 17	Workers' Compensation Notice
Form 18	Notice of Accident to Employer (N.C. Gen. Stat. § 97-22) and Claim of Employee or His Personal Representative or Dependents (N.C. Gen. Stat. § 97-24)
Form 18B	Claim by Employee or His Personal Representative or Dependents for Workers' Compensation Benefits (N.C. Gen. Stat. § 97-53)
Form 18M	Employee's Claim for Additional Medical Compensation
Form 19	Employer's Report of Injury to Employee
Form 21 rev.	Agreement for Compensation for Disability Pursuant to N.C. Gen. Stat. § 97-82
Form 22	Statement of Days Worked and Earnings of Injured Employee (Wage Chart)
Form 24 rev.	Application to Terminate or Suspend Payment of Compensation Pursuant to N.C. Gen. Stat. § 97-18.1
Form 25D	Dentists' Itemized Statement of Charges for Treatment and Certification of Treatment of Disability
Form 25M	Physician's Itemized Statement of Charges for Treatment and Certification of Treatment
Form 25R rev.	Evaluation for Permanent Impairment
Form 25T	Itemized Statement of Charges for Travel
Form 25P	Itemized Statement of Charges for Drugs
Form UB-92	Hospital Bill
Form 26 rev.	Supplemental Agreement as to Payment of Compensation Pursuant to N.C. Gen. Stat. § 97-82
Form 26D	Agreement for Compensation Under N.C. Gen. Stat. § 97-37
Form 28 rev.	Return to Work Report
Form 28B rev.	Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical Compensation
Form 28T	Notice of Termination of Compensation by Reason of Trial Return to Work Pursuant to N.C. Gen. Stat. § 97-18.1(b) and N.C. Gen. Stat. § 97-32.1
Form 28U	Employee's Request that Compensation be Reinstated After Unsuccessful Trial Return to Work Pursuant to N.C. Gen. Stat. § 97-32.1
Form 29	Supplementary Report for Fatal Accidents
Form 30	Agreement for Compensation for Death
Form 30D	Notice of Death Award (Approval of Agreement)
Form 31	Application for Lump Sum Award
Form 33	Request that Claim be Assigned for Hearing
Form 33R	Response to Request that Claim be Assigned for Hearing
Form 36 rev.	Subpoena for Witness and Subpoena to Produce Items or Documents
Form 42	Application for Appointment of Guardian <i>Ad Litem</i>
Form 44	Application for Review
Form 50	Itemized Statement of Charge for Nursing
Form 51	Consolidated Fiscal Annual Report of "Medical Only" and "Lost Time" Cases
Form 60	Employer's Admission of Employee's Right to Compensation Pursuant to N.C. Gen. Stat. § 97-18(b)
Form 61	Denial of Workers' Compensation Claim Pursuant to N.C. Gen. Stat. § 97-18(c) and (d)
Form 62	Notice of Reinstatement of Compensation Pursuant to N.C. Gen. Stat. § 97-32.1 and N.C. Gen. Stat. § 97-18(b)
Form 63	Notice to Employee of Payment of Compensation Without Prejudice to Later Deny the Claim Pursuant to N.C. Gen. Stat. § 97-18(d)
Form IZ-510	Medical Bill Analysis Used for Approval and Reduction of Medical Bills

(2) The use of any printed forms other than those approved and adopted by the Industrial Commission is prohibited. Insurance carriers, self-insureds, attorneys and other parties may photocopy

approved forms for their own use, provided:

- (a) The color of the paper upon which the form is printed may be substantially identical to that used on the approved Industrial Commission's form, at the option of the Employer or Carrier/Administrator and the Employee.
- (b) No statement, question, or information blank contained on the approved Industrial Commission's form is omitted from the substituted form.
- (c) Such substituted form is substantially identical in size and format with the approved Industrial Commission's form.

(3) The following forms may be utilized in preparing routine orders for the signature of a Commissioner or Deputy Commissioner, and are appended at the end of these Rules:

- Form I Order for Third Party Recovery Distribution per N.C. Gen. Stat. § 97-10.2
- Form IIa Order Approving Compromise Settlement Agreement (admitted liability, medical paid) and Third Party Distribution
- Form IIb Order Approving Compromise Settlement Agreement (denied liability, unpaid medical) and Third Party Distribution
- Form IIIa Order for Approving Compromise Settlement Agreements (admitted liability, medical paid)
- Form IIIb Order for Approving Compromise Settlement Agreements (denied liability, unpaid medical)

(4) Copies of rules, forms and Industrial Commission Minutes can be obtained by contacting the Administrator's Office of the Industrial Commission, 430 N. Salisbury Street, Raleigh, North Carolina 27611.

(5) The Amendments to this Rule are effective March 15, 1995, except as to Form 28T, Form 28U, and Form 62 which are effective February 15, 1995.

Rule 104

Employer's Report of Injury

(1) An employer shall immediately report to its carrier or administrator any injury, or allegation by an employee of an injury, sustained in the course of employment for which the attention of a physician is needed or actually sought. Within five (5) days of knowledge of the injury or allegation, the employer or carrier/administrator shall file with the Industrial Commission and provide a copy to the employee of a Form 19, Employer's Report of Injury to the Employee, if injury causes the employee to be absent from work for more than one (1) day and the employee's medical compensation is greater than an amount which is established periodically by the Industrial Commission in its Minutes. The employer may record the employee's or another person's description of the injury on said form without admitting the truth of the information.

(2) This Rule is effective March 15, 1995.

Rule 201

Notice of Employment Subject to the Act

(1) Pursuant to the provisions of N.C. Gen. Stat. § 97-93 all employers subject to the provisions of the Workers' Compensation Act shall post in a conspicuous location in places of employment a Form 17, Workers' Compensation Notice, to give notice to the employees that they are in an employment subject to the provisions of the Workers' Compensation Act and that their employer has obtained workers' compensation coverage or has qualified as self-insured for workers' compensation purposes.

(2) Should the employer allow its workers' compensation coverage to lapse or cease to qualify as a self-insured, the employer shall remove within five (5) working days any Form 17 and any other notice indicating otherwise.

(3) The Amendments to this Rule are effective March 15, 1995.

Rule 404

Termination of Compensation

(1) Payments of compensation undertaken pursuant to an award of the Industrial Commission shall continue until the terms of the award have been fully satisfied; provided, however, that in cases where the award is to pay compensation during disability, there is a rebuttable presumption that disability continues until the employee returns to work. No application to terminate or suspend compensation shall be approved without a formal hearing if the effect of such approval is to set aside the provisions of an award of the Industrial Commission.

(2) When an employer or carrier/administrator seeks to terminate or suspend compensation being paid pursuant to N.C. Gen. Stat. § 97-29, for a reason other than those specified in N.C. Gen. Stat. § 97-18(d), payment without prejudice, or N.C. Gen. Stat. § 97-18.1(b), trial return to work, the employer or carrier/administrator shall notify the employee and the employee's attorney of record, if any, on Form 24 rev., Application to Stop Payment of Compensation. The employer or carrier/administrator shall complete the blank space in the "Important Notice to Employee" portion of Form 24 rev. by inserting a date seventeen (17) days from the date the employer or carrier/administrator deposits the completed Form 24 rev. in the mail to the employee and the employee's attorney of record, if any. The original of the Form 24 rev. and the attached documents shall be sent to the Industrial Commission at the same time a copy of the Form 24 rev. and attached documents are sent to the employee and the employee's attorney of record, if any. The Form 24 rev. shall specify the number of pages of documents attached which are to be considered by the Industrial Commission. Failure to specify the number of pages may result in the refusal of the Industrial Commission to accept the same for filing. If the employee or the employee's attorney of record, if any, objects by the date inserted on the employer's Form 24 rev., or within such additional reasonable time as the Industrial Commission may allow, the Industrial Commission shall set the case for an informal hearing. A copy of any objection shall be sent, with any supporting documents, to the employer and carrier/administrator.

(3) If an employee does not object within the allowed time, the Industrial Commission shall review the Form 24 rev. and any attached documentation, and an Administrative Decision and Order may be rendered without an informal hearing as to whether compensation shall be terminated or suspended, except as provided in paragraph (6) below. Either party may seek administrative review of the Administrative Decision and Order as provided by Rule 703.

(4) If the employee timely objects to the Form 24 rev., the Industrial Commission shall conduct an informal hearing within twenty-five (25) days of the receipt by the Industrial Commission of the Form 24 rev., unless the time is extended for good cause shown. The informal hearing may be by telephone conference between the Industrial Commission and the parties or their attorneys of record, if any. When good cause is shown, the informal hearing may be conducted with the parties or their attorneys of record, if any, personally present with the Industrial Commission in Raleigh or such other location as is selected by the Industrial Commission. The Industrial Commission shall make arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious manner under the circumstances. Except for good cause shown, the informal hearing shall be no more than thirty (30) minutes, with each side given ten (10) minutes to present its case and five (5) minutes for rebuttal. Notwithstanding the above, the employer or carrier/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.

(5) A decision to terminate, suspend, or continue compensation shall be made within five (5) days after the completion of the informal hearing, except as provided in paragraph (6) below. Either party may appeal the Administrative Decision and Order of the Industrial Commission as provided by Rule 703.

(6) In the event the Industrial Commission is unable to reach a decision after an informal hearing, the Industrial Commission shall place the case on the formal hearing docket and the

employer or carrier/administrator shall be required within thirty (30) days of the date of the Administrative Decision and Order to file a Form 33, if additional issues are to be addressed, or to notify the Industrial 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 rev. 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.

(7) Any Administrative Decision and Order shall be mailed to the non-prevailing party by certified mail.

(8) The Amendments to this Rule are effective March 15, 1995.

RULE 404A

Trial Return to Work

(1) Except as provided in subparagraph (7), when compensation for total disability being paid pursuant to N.C. Gen. Stat. § 97-29 is terminated because the employee has returned to work for the same or a different employer, such termination is subject to the trial return to work provisions of N.C. Gen. Stat. § 97-32.1. When compensation is terminated under these circumstances, the employer or carrier/administrator shall file a Form 28T and provide a copy of it to the employee and the employee's attorney of record, if any.

(2) If during the trial return to work period, the employee must stop working due to the injury for which compensation had been paid, the employee shall complete and file a Form 28U and provide a copy of the completed form to the employer and carrier/administrator. A Form 28U shall contain a section which must be completed by the employee's authorized treating physician certifying that the employee's injury for which compensation had been paid prevents the employee from continuing the trial return to work. If the employee returned to work with an employer other than the employer at the time of injury, the employee must complete the "Employee's Release and Request For Employment Information" section of a Form 28U.

(3) Upon receipt of a properly completed a Form 28U, the employer or carrier/administrator shall forthwith resume payment of compensation for total disability. If the employee fails to provide the required certification of the authorized treating physician or if the employee fails to execute the "Employee's Release and Request" section of a Form 28U, if required pursuant to paragraph (2) above, the employer or carrier/administrator shall not be required to resume payment of compensation. Instead, in such circumstances, the employer or carrier/administrator shall forthwith return a Form 28U to the employee and the employee's attorney of record, if any, along with a statement explaining the reason the Form 28U is being returned and the reason compensation is not being reinstated.

(4) The reinstated compensation shall be due and payable on the date and for the period commencing on the date the employer or carrier/administrator receives a properly completed Form 28U certifying an unsuccessful return to work. Such resumption of compensation shall not preclude the employee's right to seek, nor the employer's or carrier/administrator's right to contest, the payment of compensation for the period prior or subsequent to such reinstatement. If it is thereafter determined that any temporary total or temporary partial compensation, including the reinstated compensation, was not due and payable, a credit shall be given against any other compensation determined to be owed.

(5) When the employer or carrier/administrator has received a properly completed Form 28U and contests the employee's right to reinstatement of total disability compensation, it may suspend or terminate compensation only as provided in N.C. Gen. Stat. § 97-18.1 and/or pursuant to the provisions of N.C. Gen. Stat. § 97-83 and N.C. Gen. Stat. § 97-84.

(6) Upon resumption of payment of compensation for total disability, the employer or carrier/administrator shall complete and file a Form 62 and/or such other forms as may be required by the Workers' Compensation Act or by Industrial Commission rule. A copy of the Form 62 shall be sent to the employee and the employee's attorney of record, if any.

- (7) The trial return to work provisions do not apply to the following:
- (a) "Medical only" cases, defined as cases in which the employee is not absent from work more than one (1) day and in which medical expenses are less than the amount periodically established by the Industrial Commission in its Minutes;
 - (b) Cases in which the employee has missed fewer than eight (8) days from work;
 - (c) Cases wherein the employee has been released to return to work by the authorized treating physician without restriction or limitation except that if the authorized treating physician, within forty-five (45) days of the employee's return to work date, determines that the employee is not able to perform the job duties assigned, then the employer or carrier/administrator must resume benefits. If within the same time period, the treating physician determines that the employee may work only with restrictions, then the employee is entitled to a resumption of benefits commencing as of the date of the report, unless the employer is able to offer employment consistent with the restrictions, in which case a trial return to work period shall be deemed to have commenced at the time of the employee's initial return to work;
 - (d) Cases wherein the employee has accepted or agreed to accept compensation for permanent partial disability pursuant to N.C. Gen. Stat. § 97-31, unless the trial return to work follows reinstatement of compensation for total disability under N.C. Gen. Stat. § 97-29; and
 - (e) Claims pending on or filed after January 1, 1995, when the employer or carrier/administrator contests a claim pursuant to N.C. Gen. Stat. § 97-18(d) within the time allowed thereunder.
- (8) This Rule is effective February 15, 1995, and applies to any employee who leaves work on or after that date due to a compensable injury.

Rule 407

Fees for Medical Compensation

(1) Subject to the provisions of N.C. Gen. Stat. § 97-25.3, Preauthorization, the Industrial Commission shall adopt and publish a Fee Schedule, pursuant to the provisions of N.C. Gen. Stat. § 97-26(a), fixing maximum fees, except for hospital fees pursuant to N.C. Gen. Stat. § 97-26 (b), which may be charged for medical, surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances. The fees prescribed in the applicable published Fee Schedule shall govern and apply in all cases. However, in special hardship cases where sufficient reason is demonstrated to the Industrial Commission, fees in excess of those so published may be allowed. Persons who disagree with the allowance of such fees in any case may make application for and obtain a full review of the matter before the Industrial Commission as in all other cases provided. Copies of this published Fee Schedule may be obtained from the Industrial Commission.

(2) A provider of medical compensation shall submit its statement for services within seventy-five (75) days of the rendition of the service or if treatment is longer, within thirty (30) days after the end of the month during which multiple treatments were provided, or within such other reasonable period of time as allowed by the Industrial Commission. However, in cases where liability is initially denied but subsequently admitted or determined by the Industrial Commission, the time for submission of medical bills shall run from the time the health care provider received notice of the admission or determination of liability. Within thirty (30) days of receipt of the statement, the employer, or carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the Industrial Commission for approval or send the provider written objections to the statement. If an employer, carrier/administrator or managed care organization disputes a portion of the provider's bill, it shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges through its contractual arrangement or through the Industrial Commission. If any bill for medical compensation services is not paid within sixty (60) days after it has been approved by the Industrial Commission and returned to the responsible party, or, when the employee is receiving treatment through a managed care organization, within sixty (60) days after the bill has been properly submitted to an insurer or managed care organization, there shall be added to such unpaid bill an amount equal to ten percent (10%), which shall be paid at the same time as, but in addition to, such bill, unless late payment is excused by the Industrial Commission. When the ten percent (10%) addition to the bill is uncontested, payment shall be made to the provider without notifying or seeking approval from the Industrial Commission. When the ten percent (10%) addition to the bill is contested, any party may request a hearing by the Industrial Commission pursuant to N.C. Gen. Stat. § 97-83, and N.C. Gen. Stat. § 97-84.

(3) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the payee hospital, upon request, shall provide all reasonable access and copies of appropriate records, without charge or fee, to the person(s) chosen by the payor to review and audit the records.

(4) The responsible employer or carrier/administrator shall pay the statements of medical compensation providers to whom the employee has been referred by the authorized treating physician, unless said physician has been requested to obtain authorization for referrals or tests; provided, that compliance with such request does not unreasonably delay the treatment or service to be rendered to the employee.

(5) It is the responsibility of the carrier, self-insured employer, group insured as certified by the North Carolina Department of Insurance, and statutory self-insured (state agency or political subdivision) to submit on a yearly basis a Form 51, Consolidated Fiscal Annual Report of "Medical Only" and "Lost Time" Cases.

(6) Employees shall be entitled to reimbursement for sick travel when the travel is medically necessary and the mileage is twenty (20) or more miles, round trip, at a rate to be established periodically by the Industrial Commission in its Minutes. Employees shall be entitled to lodging and meal expenses, at a rate to be periodically established by the Industrial Commission in its Minutes, when it is medically necessary that the employee stay overnight at a location away from the employee's usual place of residence. An employee shall be entitled to reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual costs of the expenses, unless the Industrial Commission determines the expenses were not reasonable.

(7) The Amendments to this Rule are effective March 15, 1995.

Rule 408

Additional Medical Compensation

(1) The Industrial Commission may enter an order as contemplated by N.C. Gen. Stat. § 97-25.1 providing for additional medical compensation on its own motion or pursuant to a stipulation of the parties or by approval of an agreement of the parties for additional medical compensation reflected in a Form 21 or a Form 26.

(2) If the parties have not reached an agreement regarding additional medical compensation, an employee may file a claim with the Industrial Commission for an order pursuant to the terms of N.C. Gen. Stat. § 97-25.1, for payment of additional medical compensation within two (2) years of the date of the last payment of medical or indemnity compensation, whichever shall last occur. The claim may be made on a Form 18M or by written request to the Industrial Commission. The original and one copy of the claim must be filed with the Industrial Commission, one copy must be provided to the employer or carrier/administrator, and one copy must be provided to the attorney of record, if any.

(3) Upon receipt of the claim, the Industrial Commission will notify the employer or carrier/administrator that the claim has been received by providing a copy of a Form 18M or a written claim. The employer or carrier/ administrator shall send to the Industrial Commission and to the employee and the employee's attorney of record, if any, a written statement as to whether the employee's request is accepted or denied. If the request is denied, the employer or carrier/administrator shall state in writing the grounds for the denial and shall attach any supporting documentation to the statement of denial.

(4) In cases where the employee's right to additional medical compensation is contested, a request that a claim be assigned for hearing may be filed with the Industrial Commission on a Form 33.

(5) This Rule applies to injuries by accident occurring on or after July 5, 1994.

(6) This Rule is effective March 15, 1995.

Rule 501

Agreements for Payment of Compensation

(1) To facilitate the prompt payment of compensation within the time prescribed in N.C. Gen. Stat. § 97-18, the Industrial Commission will accept memoranda of agreements on Industrial Commission forms. The agreements may be executed by the employer or the carrier/administrator where compensation payable under the agreement does not exceed fifty-two (52) weeks.

(2) In cases where the compensation payable under the agreement exceeds fifty-two (52) weeks, the agreement must be executed by the employer as well as the carrier/administrator. For good cause shown, this requirement may be waived by the Industrial Commission.

(3) No agreement for permanent disability will be approved until all relevant medical, vocational and nursing rehabilitation reports known to exist in the case have been filed with the Industrial Commission.

(4) All memoranda of agreements must be submitted to the Industrial Commission in triplicate on Industrial Commission forms, as specified in paragraph (6) below. Agreements in proper form and conforming to the provisions of the Workers' Compensation Act will be approved by the Industrial Commission and a copy returned to the employer or carrier/administrator and a copy sent to the employee, unless amended by award, in which event a copy of the award will be returned with the agreement.

(5) The employer or carrier/administrator, or the attorney of record, if any, shall provide the employee, and the employee's attorney of record, if any, a copy of a Form 21, Form 26, Form 26D, and Form 30 when the employee signs said forms, and the employer or carrier/administrator will send a copy of a Form 28B rev. to the employee and the employee's attorney of record, if any, within sixteen (16) days after the last payment of compensation for either temporary or permanent disability, pursuant to N.C. Gen. Stat. § 97-18.

(6) All memoranda of agreements for cases which are currently calendared for hearing before a Commissioner or Deputy Commissioner shall be sent directly to that Commissioner or Deputy Commissioner at the Industrial Commission. Before a case is calendared, or once a case has been continued, or removed, or after the filing of an Opinion and Award, all memoranda of agreements shall be directed to the Claims Department of the Industrial Commission.

(7) After the employer or carrier/administrator has received a memorandum of agreement which has been signed by the employee and employee's attorney of record, if any, it shall have twenty (20) days within which to submit the memorandum of agreement to the Industrial Commission for review and approval or within which to show good cause for not submitting the memorandum of agreement signed only by the employee; provided, however, that for good cause shown the twenty (20) day period may be extended.

(8) The Amendments to this Rule are effective March 15, 1995.

Rule 502

Compromise Settlement Agreements

(1) All compromise settlement agreements must be submitted to the Industrial Commission for approval. Only those agreements deemed fair and just and in the best interest of all parties will be approved.

(2) No compromise agreement will be approved unless it contains the following language or its equivalent:

- (a) Where liability is admitted, that the employer or carrier/administrator undertakes to pay all medical expenses to the date of the agreement.
- (b) Where liability is denied, that the employer or carrier/administrator undertakes to pay all unpaid medical expenses to the date of the agreement. However, where application of this Rule shall work an injustice, it may be waived in the discretion of the Industrial Commission.
- (c) That the employee knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act.
- (d) That the employer or carrier/administrator will pay all costs incurred.
- (e) That no rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released.
- (f) That 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.
- (g) 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, that 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 subsection of the Rule shall not apply where the employee is represented by counsel or, even if the employee is not represented by counsel, where the employee certifies that partial wage loss due to an injury or occupational disease is not being claimed.
- (h) 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, the agreement shall summarize the employee's age, educational level, past vocational training, past work experience, and any impairment, emotional, mental or physical, which predates the current injury or occupational disease. The parties will be relieved of this duty only upon a showing that providing such information creates an unreasonable burden upon them. This subsection of the Rule shall not apply where employee is represented by counsel or, even if the

the employee is not represented by counsel, where the employee certifies that total wage loss due to an injury or occupational disease is not being claimed.

(3) No compromise agreement will be considered unless the following additional requirements are met:

(a) All medical, vocational, and rehabilitation reports known to exist, including but not limited to those pertinent to the employee's future earning capacity, must be submitted with the agreement to the Industrial Commission by the employer, the carrier/ administrator, or the attorney for the employer.

(b) Parties and all attorneys of record must have signed the agreement.

(4) When a settlement has been reached, the written agreement must be submitted to the Industrial Commission within a reasonable time. All compromise settlement agreements which are currently calendared for hearing before a Commissioner or Deputy Commissioner shall be sent directly to that Commissioner or Deputy Commissioner at the Industrial Commission. Before a case is calendared, or once a case has been continued, or removed, or after the filing of an Opinion and Award, all compromise settlement agreements shall be directed to the Executive Secretary of the Industrial Commission.

(5) Once a compromise settlement agreement has been approved by the Industrial Commission, the employer or carrier/administrator shall furnish an executed copy of said agreement to the employee or his attorney of record, if any.

(6) The Amendments to this Rule are effective March 15, 1995.

Rule 604

Appointment of Guardian *Ad Litem*

(1) In all cases where it is proposed that minors or incompetents shall sue by their guardian *ad litem*, the Industrial Commission shall appoint such guardian *ad litem* upon the written application of a reputable, disinterested person closely connected with such minor or incompetent; but if such person will not apply, then, upon the application of some reputable citizen; and the Industrial Commission shall make such appointment only after due inquiry as to the fitness of the person to be appointed.

(2) In no event, however, shall any compensation be paid directly to the guardian *ad litem*. Rather, compensation payable to a minor or incompetent shall be paid as provided in N.C. Gen. Stat. § 97-48 and N.C. Gen. Stat. § 97-49. The use of the word "guardian" in N.C. Gen. Stat. § 97-49 shall mean a general guardian appointed by the General Courts of Justice and shall not mean a guardian *ad litem*.

(3) The Amendments to this Rule are effective March 15, 1995.

Rule 607

Discovery of Records and Reports

(1) Upon written request, any party shall furnish, without cost, the requesting party a copy of any and all medical, vocational and rehabilitation reports, and employment records in its possession, within thirty (30) days of the request, unless objection is made within that time period. This obligation exists whether or not a request for hearing has been filed. This obligation is a continuing one, and any such reports and records which come into the possession of a party after receipt of a request pursuant to this Rule shall be provided to the requesting party within fifteen (15) days from its receipt of these reports and records.

(2) The Amendments to this Rule are effective March 15, 1995.

Rule 609

Motions Practice in Contested Cases

(1) All motions in cases which are currently calendared for hearing before a Commissioner or Deputy Commissioner shall be sent directly to that Commissioner or Deputy Commissioner at the Industrial Commission. Before a case is calendared, or once a case has been continued, or removed, or after the filing of an Opinion and Award, motions shall be directed to the Executive Secretary of the Industrial Commission.

(2) A motion shall state with particularity the grounds on which it is based, the relief sought, and a brief statement of 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.

(3) Motions to continue or remove a case from the hearing calendar on which the case is set must be made well in advance of the scheduled hearing and may be made in written or oral form. In all cases the moving party must 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 must be followed with a written confirmation from the moving party.

(4) The responding party to a motion shall have ten (10) days after a motion is served during which to file and serve copies of response in opposition to the motion. The Industrial Commission may shorten or extend the time for responding to any motion.

(5) Notwithstanding the provisions of paragraph (4) above, a motion may be acted upon at any time, despite the absence of notice to all parties, and without awaiting a response thereto. A party who has not received actual notice of such a motion or who has not filed a response at the time such action is taken and who is adversely affected by the action may request reconsideration, vacation, or modification thereof. Motions will be determined without oral argument, unless the Industrial Commission orders otherwise.

(6) In all cases where correspondence relative to a case before the Industrial Commission is sent to the Industrial Commission, copies of such correspondence shall be contemporaneously sent by the same method of transmission, if possible, to opposing counsel or, if none, to the opposing party.

(7) All motions made before the Industrial Commission must include a proposed Order to be considered by the Industrial Commission.

(8) Except as otherwise expressly provided by statute, rule, or by order of the Commission, in computing any period of time prescribed or allowed by the Commission's Rules, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. Whenever a party has the right to do some act or take some proceedings within a

prescribed period after the service of any document, three (3) days shall be added to the prescribed period.

(9) The Amendments to this Rule are effective March 15, 1995.

Rule 610

Pre-Trial Conference

(1) A Commissioner or Deputy Commissioner may order the parties to appear at a pre-trial conference to determine specific matters. This conference may be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate, including conference telephone calls.

(2) Any party may request a pre-trial conference when that party deems that such a conference would aid in settling the case or resolving some issues prior to trial. Requests for such pre-trial conferences shall be directed to the Chief Deputy Commissioner, unless the claim has already been calendared before a Commissioner or Deputy Commissioner, in which instance, the request shall be directed to that Commissioner or Deputy Commissioner.

(3) Without a pre-trial conference, a Commissioner or a Deputy Commissioner may order the parties to prepare a Pre-Trial Agreement. Such Agreement shall be prepared in a form which substantially complies with 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 an Order to prepare a Pre-Trial Agreement, the Commissioner or Deputy Commissioner may remove the case from the hearing docket. Should the parties thereafter comply with the Order to prepare a Pre-Trial Agreement after the removal of the case, the Agreement must be directed to the Commissioner or Deputy Commissioner who removed the case from the docket; and the Commissioner or Deputy Commissioner will Order the case returned to the hearing docket as if a Request for Hearing had been filed on the date of the Order to return the case to the hearing docket.

(4) The Amendments to this Rule are effective March 15, 1995.

Rule 614

Attorneys Retained for Proceedings

(1) Any attorney who accepts employment in a proceeding before the Industrial Commission shall immediately notify in writing the Industrial Commission of an appearance, at which time the attorney shall be attorney of record. A copy of this notice shall be served on all other counsel and to all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney at the business address provided, and no direct contact or communication concerning or affecting contested matters may be made with the attorney's client by the opposing party or any person on its behalf, without the attorney's permission, except providers of medical compensation and except as otherwise required by law or Industrial Commission Rules and Forms.

(2) Any attorney who wishes to withdraw from employment in a proceeding before the Industrial Commission shall file with the Industrial Commission, in writing:

- (a) A Motion to Withdraw which shall contain a statement of reasons for the request and a statement that the reasons for the request have been served on the client or clients from whose employment the attorney wishes to be allowed to withdraw.
- (b) A Motion to Withdraw before an award is made shall state whether the withdrawing attorney requests an attorney fee from the represented party once an award of compensation is made or approved. An attorney replacing a withdrawn attorney shall be deemed to have received notice of the request of the withdrawing attorney in regards to the attorney fee request.

(3) The employment of an attorney so petitioning for permission to withdraw may be terminated only by written permission of the Industrial Commission.

(4) An award of the Industrial Commission does not release an attorney as the attorney of record. The attorney of record may, upon Motion to Withdraw, be released by written permission of the Industrial Commission.

(5) The Amendments to this Rule are effective March 15, 1995.

Rule 703

Appeals from Administrative Decisions

(1) Orders, Decisions, and Awards made in a summary manner, without detailed findings of fact, including Decisions on applications to approve agreements to pay compensation and medical bills, applications to approve the termination or suspension of compensation, applications for change in treatment or providers of medical compensation, applications to change the interval of payments, and applications for lump sum payments of compensation may be appealed by filing a Motion for Reconsideration with the Industrial Commission and addressed to the Administrative Officer who made the Decision or may be appealed by requesting a hearing within fifteen (15) days of receipt of the Decision or receipt of the ruling on a Motion to Reconsider. Said issues may also be raised and determined at a subsequent hearing.

(2) Motions for Reconsideration shall not stay the effect of the Order, Decision or Award; provided, that the Administrative Officer making the decision or a Commissioner may enter an Order staying its effect pending the ruling on the Motion for Reconsideration or pending a Decision by a Commissioner or Deputy Commissioner following a formal hearing. In determining whether or not to grant a stay, the Commissioner or Administrative Officer will consider whether granting the stay will frustrate the purposes of the Order, Decision, or Award.

(3) Any appeal made by requesting a hearing shall be made to the Industrial Commission and filed with the Industrial Commission's Docket Director. The Industrial Commission shall designate a Commissioner or Deputy Commissioner to hear the appeal. The Commissioner or Deputy Commissioner hearing the matter shall consider all issues *de novo*, and no issue shall be considered moot solely because the Order has been fully executed during the pendency of the hearing.

(4) The Amendments to this Rule are effective March 15, 1995.

Form I. Distribution of Third Party Funds With Attorney

NORTH CAROLINA INDUSTRIAL COMMISSION

I. C. NO. _____

)	
	Employee,)	
	Plaintiff;)	O R D E R
v.)	DIRECTING DISTRIBUTION
)	
)	O F
	Employer;)	THIRD PARTY RECOVERY
)	
	Carrier;)	B Y
	Defendants.)	
-----)	DEPUTY COMMISSIONER
)	
THIRD PARTY TORT-FEASOR.)	
_____)	

FILED:

Application for an order directing distribution of third party funds in this case has been submitted to the Industrial Commission.

A P P E A R A N C E S

Plaintiff:

Defendants:

Third Party Tort-Feasor:

* * * * *

Pursuant to the provisions of N.C. Gen. Stat. § 97-10.2, the third party funds shall be distributed as follows:

1. The sum of \$___ shall be paid the workers' compensation carrier in full settlement of its subrogation interest.
2. The sum of \$___ shall be paid plaintiff.

3. An attorney fee not to exceed 33 1/3 percent of the third party funds shall be deducted from such funds and paid directly to plaintiff's counsel. This fee shall be paid by the parties in proportion to the amount each receives out of the recovery, as by statute provided.
4. Defendants shall pay the costs.

The workers' compensation carrier shall pay the costs due the Industrial Commission.

DEPUTY COMMISSIONER

Form IIa. Compromise Settlement Agreement (Admitted Liability, Medical Paid), and Distribution of Third Party Funds

NORTH CAROLINA INDUSTRIAL COMMISSION

I. C. NO. _____

)	
	Employee,)	
	Plaintiff;)	
)	
)	
v.)	
)	
)	
	Employer;)	
)	
)	
	Carrier;)	
	Defendants.)	
)	
-----))	
)	
THIRD PARTY TORT-FEASOR;)	
THIRD PARTY CARRIER.)	
_____))	

O R D E R
 APPROVING COMPROMISE
 SETTLEMENT AGREEMENT
 AND
 DIRECTING DISTRIBUTION
 O F
 THIRD PARTY RECOVERY
 B Y
 DEPUTY COMMISSIONER

FILED:

A compromise settlement agreement and an application for an order directing distribution of third party funds in this case have been submitted to the Industrial Commission.

A P P E A R A N C E S

Plaintiff:

Defendants:

Third Party Tort-Feasor:

* * * * *

After giving due consideration to all matters involved in this case, and upon defendants' stated or implied representation that all known medical reports concerning the subject injury have been submitted to the Industrial Commission, per Rule 502(c)(1), the undersigned is of the opinion that the compromise settlement agreement is fair and equitable, probably in the best interest of all parties, and should be APPROVED.

IT IS THEREFORE ORDERED that the third party funds in the amount of \$___ be distributed in accordance with N.C. Gen. Stat. § 97-10.2, as follows:

1. The sum of \$___, subject to counsel fee, shall be paid the workers' compensation carrier in full settlement of its subrogation interest.
2. The sum of \$___, subject to counsel fee, shall be paid plaintiff.
3. An attorney fee in the amount of \$___ is hereby approved and shall be deducted from the compensation paid by the parties, in proportion to the amount each receives out of the recovery as by statute provided.
4. Defendants shall pay the costs.

Compliance with the agreement, together with the foregoing provisions of this Order, shall fully acquit and discharge defendants from any further liability under the Workers' Compensation Act by reason of plaintiff's injury by accident giving rise hereto.

It is to be noted, however, that this Order does not purport to approve, resolve or address any issue or matter over which the Industrial Commission has no jurisdiction, whether or not such issue or matter is referred to in the compromise settlement agreement executed by the parties in this action.

DEPUTY COMMISSIONER

Form IIb. Compromise Settlement Agreement (Denied Liability, Unpaid Medicals) and Distribution of Third Party Funds

NORTH CAROLINA INDUSTRIAL COMMISSION

I. C. NO. _____

)	
	Employee,)	
	Plaintiff;)	
)	
)	
v.)	
)	
)	
	Employer;)	
)	
)	
	Carrier;)	
	Defendants.)	
)	
-----)	
)	
)	
THIRD PARTY TORT-FEASOR.)	
_____)	

O R D E R
 APPROVING COMPROMISE
 SETTLEMENT AGREEMENT
 AND
 DIRECTING DISTRIBUTION
 O F
 THIRD PARTY RECOVERY
 B Y
 DEPUTY COMMISSIONER

FILED:

A compromise settlement agreement and an application for an order directing distribution of third party funds in this case has been submitted to the Industrial Commission.

A P P E A R A N C E S

Plaintiff:

Defendants:

Third Party Tort-Feasor:

* * * * *

After giving due consideration to all matters involved in this case, and upon defendants' stated or implied representation that all known medical reports concerning the subject injury have been submitted to the Industrial Commission per Rule 502(c)(1), the undersigned is of the opinion that the compromise settlement agreement is fair and equitable, probably in the best interest of all parties, and should be APPROVED.

It is expressly recognized that plaintiff's claim is strongly contested, that defendants are not by the agreement admitting, nor is the Industrial Commission finding liability and that plaintiff, by accepting the agreement which provides for payment only of unpaid medical bills, is avoiding the risk that the claim will be totally denied by the Industrial Commission.

Pursuant to the provisions of N.C. Gen. Stat. § 97-10.2, the third party funds shall be distributed as follows:

1. The sum of \$____, subject to counsel fee, shall be paid the workers' compensation carrier in full settlement of its subrogation interest.
2. The sum of \$____, subject to counsel fee, shall be paid plaintiff.
3. An attorney fee in the amount of \$____ is hereby approved and shall be deducted from the compensation paid by the parties, in proportion to the amount each receives out of the recovery, as by statute provided.
4. Defendants shall pay the costs.

Compliance with the agreement, together with the foregoing provisions of this Order, shall fully acquit and discharge defendants from any further liability under the Workers' Compensation Act by reason of plaintiff's injury by accident giving rise hereto.

It is to be noted, however, that this Order does not purport to approve, resolve or address any issue or matter over which the Industrial Commission has no jurisdiction, whether or not such issue or matter is referred to in the compromise settlement agreement executed by the parties in this action.

DEPUTY COMMISSIONER

NORTH CAROLINA INDUSTRIAL COMMISSION

I. C. NO. _____

)
Employee,)
Plaintiff;)
v.)
)
)
Employer;)
)
)
Carrier;)
Defendants.)

O R D E R
APPROVING COMPROMISE
SETTLEMENT AGREEMENT

B Y

DEPUTY COMMISSIONER

FILED:

A compromise settlement agreement in this case has been submitted to the Industrial Commission.

A P P E A R A N C E S

Plaintiff:

Defendants:

* * * * *

The parties now have executed and submitted for approval a compromise settlement agreement. That agreement is incorporated herein by reference, and is approved in the amount of \$____. Compliance with the terms of the agreement shall discharge defendants from further liability under the Workers' Compensation Act by reason of the injury giving rise to this claim.

An attorney's fee of \$____ is approved for plaintiff's counsel. This amount shall be deducted from the sum due plaintiff and paid directly to plaintiff's counsel.

It is to be noted, however, that this Order does not purport to approve, resolve or address any issue or matter over which the Industrial Commission has no jurisdiction, whether or not such issue or matter is referred to in the compromise settlement agreement executed by the parties in this action.

Defendants shall pay the costs.

DEPUTY COMMISSIONER

NORTH CAROLINA INDUSTRIAL COMMISSION

I. C. NO. _____

)
) Employee,)
) Plaintiff;)
)
v.)
)
)
) Employer;)
)
)
) Carrier;)
_____ Defendants.)

O R D E R
APPROVING COMPROMISE
SETTLEMENT AGREEMENT

B Y

DEPUTY COMMISSIONER

FILED:

A compromise settlement agreement in this case has been submitted to the Industrial Commission.

A P P E A R A N C E S

Plaintiff:
Defendants:

* * * * *

The parties now have executed and submitted for approval a compromise settlement agreement. That agreement is incorporated herein by reference, and is approved in the amount of \$____. Compliance with the terms of the agreement shall discharge defendants from further liability under the Workers' Compensation Act by reason of the injury giving rise to this claim.

It is expressly recognized that plaintiff's claim is strongly contested, that defendants are not by this agreement admitting, nor is the Industrial Commission finding liability and that plaintiff, by accepting the agreement which provides for payment only of unpaid medical bills, is avoiding the risk that the claim will be totally denied by the Commission.

An attorney's fee of \$____ is approved for plaintiff's counsel. This amount shall be deducted from the sum due plaintiff and paid directly to plaintiff's counsel.

It is to be noted, however, that this Order does not purport to approve, resolve or address any issue or matter over which the

FORM IIIb
PAGE 2

I. C. NO. _____

Industrial Commission has no jurisdiction, whether or not such issue or matter is referred to in the compromise settlement agreement executed by the parties in this action.

Defendants shall pay the costs.

DEPUTY COMMISSIONER