

Appeals to the Full Commission

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INTRODUCTION

This paper will outline the rules, statutes and procedures to understand for proper practice for appeals before the Full Commission. This paper will also provide practice tips to aid in advocacy before the Full Commission.

Please note that all documents that are to be filed with the Industrial Commission shall be filed with via the Industrial Commission's EDPF site per rule 04 NCAC 10A .0108 of the Workers' Compensation Rules. To register for the EDPF site and to learn more about it, go to www.ic.nc.gov/docfiling.html and find the applicable link.

I. IMPORTANT DEADLINES

First and foremost, you must know your deadlines on Full Commission appeals. The chart below outlines the applicable deadlines.

Action	Trigger	Deadline
File Notice of Appeal to the Full Commission	Receipt of Deputy Commissioner O&A	15 days
File Motion to Reconsider Deputy Opinion & Award	Receipt of Deputy Commissioner O&A	15 days
File Form 44 & Appellant Brief	Receipt of the transcript	25 days
File Appellee Brief	Filing of Opposing Counsel's Form 44 & Appellant Brief	25 days
File Motion to Reconsider Full Commission Opinion & Award	Receipt of Full Commission O&A	15 days
File Notice of Appeal to the Court of Appeals	Receipt of Full Commission O&A -or- Receipt of Ruling on Motion to Reconsider	30 days for IC to receive

A. DEADLINE TO APPEAL THE DEPUTY COMMISSIONER OPINION AND AWARD OR TO FILE A MOTION FOR RECONSIDERATION.

The first deadline that you will face will be your deadline to appeal the Deputy Commissioner Opinion and Award. Section 97-85 of the General Statutes provides as follows:

If application is made to the Commission within 15 days from the date when notice of the award shall have been given, the full Commission shall review the award, and, if good ground be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the award: Provided, however, when application is made for review of an award, and such an award has been heard and determined by a commissioner of the North Carolina Industrial Commission, the commissioner who heard and determined the dispute in the first instance, as specified by G.S. 97-84, shall be disqualified from sitting with the full Commission on the review of such award, and the chairman of the Industrial Commission shall designate a deputy commissioner to take such commissioner's place in the review of the particular award. The deputy commissioner so designated, along with the two other commissioners, shall compose the full Commission upon review: Provided further, the chairman of the Industrial Commission shall have the authority to designate a deputy commissioner to take the place of a commissioner on the review of any case, in which event the deputy commissioner so designated shall have the same authority and duty as does the commissioner whose place he occupies on such review.

N.C GEN. STAT. § 97-85 (2017). Rule 04 NCAC 10A .0701(a) of the Workers'

Compensation Rules states as follows:

Application for review shall be made to the Commission within 15 days from the date when notice of the Deputy Commissioner's Opinion and Award shall have been given. A letter expressing a request for review is considered an application for review to the Full Commission within the meaning of G.S. 97-85, provided that the letter specifies the Order or Opinion and Award from which appeal is taken.

04 NCAC 10A .0701(a) (2017). Thus, you have 15 days from the date of receipt of the Deputy Commissioner Opinion and Award to appeal to the Full Commission, should you decide to appeal. (Appendix A, Sample Notice from the Industrial Commission with Deputy Commissioner Opinion and Award).

You must appeal an Opinion and Award if you seek review on any part of the Opinion and Award. If you do not appeal, then you may not later raise that issue on appeal to Full Commission or later at the Court of Appeals. Thus, even if you win on most of your issues but lose on one, you must appeal in order to preserve the opportunity to argue on that one issue.

Another option is to file a Motion to Reconsider with the deputy commissioner who authored the Opinion & Award. This would toll the 15 days to file Notice of Appeal to the Full Commission until the Order on the Motion to Reconsider issues. This would mean that the Notice of Appeal would be filed within 15 days of the receipt of the Order on the Motion to Reconsider; however, Rule 04 NCAC 10A .0701(c) allows the opposing party to divest the deputy of jurisdiction to hear the motion. It reads as follows:

A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed with the Deputy Commissioner within 15 days of receipt of notice of the award with a copy to the Docket Director. The time for filing a request for review from the decision of a Deputy Commissioner under the rules in this Subchapter shall be tolled until a motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner. However, if either party files a letter requesting review as set forth in Paragraph (a) of this Rule, jurisdiction shall be transferred to the Full Commission, and the Docket Director shall notify the Deputy Commissioner. Upon transfer of jurisdiction to the Full Commission, any party who had a pending motion to reconsider or amend the decision of the Deputy Commissioner may file a motion with the Chairman of the Commission requesting remand to the Deputy Commissioner with whom the motion was pending. Within the Full Commission's discretion, the matter may be so remanded. Upon the Deputy

Commissioner's ruling on the motion to reconsider or amend the decision, either party may thereafter file a letter requesting review of the Deputy Commissioner's decision as set forth in Paragraph (a) of this Rule.

04 NCAC 10A .0701(c). Thus, the opposing party may file a letter requesting review of the deputy Opinion and Award and divest the deputy of the jurisdiction to hear the Motion to Reconsider. Both the Motion to Reconsider and the notice to transfer jurisdiction must be filed with the docket director, and the Motion to Reconsider must also be filed with the deputy who authored the opinion. All will be filed via EDFP but addressed to these officers. The party propounding the Motion to Reconsider may then file a motion with the Chair of the Industrial Commission requesting remand of the matter back to the deputy. The issue shall be decided within the Full Commission's discretion.

B. DEADLINE TO FILE THE FORM 44 AND THE BRIEF(S).

The next deadlines will be the deadlines to file the Form 44 and brief(s). Rule 04 NCAC 10A .0701(a) of the Workers' Compensation Rules governs these deadlines. These deadlines run from the delivery of the transcript. Rule 04 NCAC 10A .0701(b) of the Workers' Compensation Rules addresses the delivery of the transcript:

After receipt of a request for review, the Commission shall acknowledge the request for review by letter. The Commission shall prepare the official transcript and exhibits and provide them along with a Form 44 *Application for Review* to the parties involved in the appeal at no charge within 30 days of the acknowledgement letter. The official transcript and exhibits and a Form 44 *Application for Review* shall be provided to the parties electronically, where possible. In such cases, the Commission shall send an e-mail to the parties containing a link to the secure File Transfer Protocol (FTP) site where the official transcript and exhibits may be downloaded. The e-mail shall also provide instructions for the submission of the parties' acknowledgement of receipt of the Form 44 *Application for Review* and the official

transcript and exhibits to the Commission. Parties represented by counsel shall sign a joint certification acknowledging receipt of the Form 44 *Application for Review* and the official transcript and exhibits and submit the certification within ten days of receipt of the Form 44 *Application for Review* and the official transcript and exhibits. The certification shall stipulate the date the Form 44 *Application for Review* and the official transcript and exhibits were received by the parties and shall note the date the appellant's brief is due. The Commission shall save a copy of the parties' acknowledgements in the file for the claim to serve as record of the parties' electronic receipt of the Form 44 *Application for Review* and the official transcript and exhibits. In cases where it is not possible to provide a party with the official transcript and exhibits electronically, the Commission shall provide the official transcript and exhibits and a Form 44 *Application for Review* via certified U.S. Mail, with return receipt requested. The Commission shall save a copy of the return receipt to serve as record of the party's receipt of the official transcript and exhibits and Form 44 *Application for Review*.

04 NCAC 10A .0701(b). The acknowledgment of appeal letter provides information about how the transcript and Full Commission calendars will be submitted to the parties. Some transcript notices have been known to go into spam or junk mail folders. **You need to call the Industrial Commission if you have not received your transcript within thirty days following an appeal acknowledgement letter.** (Appendix B, Sample Acknowledgment of Notice of Appeal to the Full Commission).

After you receive the transcript, make sure that you complete the transcript and Form 44 receipt certification. The deadline to file the Form 44 and brief(s) begins to run from the date that you receive the transcript in the case. **Note that the transcript will be delivered by email only to the parties and is not delivered by hard copy.** Hard copies are sent to *pro se* parties only. If you have a case in which an appeal is pending, you need to monitor your email account for the transcript. It is typically emailed from an address entitled transcripts@ic.nc.gov.

You have 25 days from the date of receipt of the transcript to file your Form 44 and brief if you are the appellant. If you are the appellee, you have 25 days from the date that your opposing counsel filed his or her appellant brief to file your brief. If both parties have appealed, then both parties file a Form 44, an appellant brief and an appellee brief on this schedule:

The appellant shall file the Form 44 *Application for Review* and brief in support of the grounds for review with the Commission with a certificate of service on the appellee within 25 days after receipt of the transcript or receipt of notice that there will be no transcript. The appellee shall have 25 days from service of the Form 44 *Application for Review* and appellant's brief to file a responsive brief with the Commission. The appellee's brief shall include a certificate of service on the appellant. When an appellant fails to file a brief, an appellee shall file its brief within 25 days after the appellant's time for filing the Form 44 *Application for Review* and appellant's brief has expired. A party who fails to file a brief shall not participate in oral argument before the Full Commission. If multiple parties request review, each party shall file an appellant's brief and appellee's brief on the schedule set forth in this Paragraph. If the matter has not been calendared for hearing, any party may file with the Docket Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative extensions of time exceed 30 days.

04 NCAC 10A .0701(e). **You must file a brief if you want to argue at oral argument, and you must have a certificate of service on the brief.** If an appellant fails to file his or her brief, then the appellee is directed to file his or her brief within 25 days of the date that the appellant brief was due.¹ 04 NCAC 10A .0701(e). Be wary of filing a Motion to

¹ The better practice is to call opposing counsel if opposing counsel has not filed his or her brief within twenty-five days of the date of delivery of the transcript. In RPC 212, the North Carolina State Bar indicated as follows when faced with the similar question with regard to whether opposing counsel can or should contact an attorney prior to filing a motion for default against the attorney's client:

A lawyer may contact an opposing lawyer who failed to file a pleading on time in order to remind the other lawyer of his error and to give the other lawyer a last opportunity to file the pleading. Such conduct is not unethical but rather illustrates the level of professional courtesy and consideration that should be encouraged among the members of the bar. Rule 7.1(a)(1) of the Rules of Professional Conduct provides that a lawyer

Dismiss and failing to file your appellee brief. If the Motion to Dismiss fails, you will not be allowed to argue at oral argument and will not have a brief before the Full Commission because you did not follow the rules.

C. DEADLINES TO FILE A MOTION TO RECONSIDER A FULL COMMISSION OPINION & AWARD AND/OR TO FILE NOTICE OF APPEAL TO THE COURT OF APPEALS.

After you receive the Full Commission Opinion and Award, you will have 30 days from the date of receipt to file Notice of Appeal to the Court of Appeals, should you wish to do so. Section 97-86 of the General Statutes governs this subject and states as follows:

The award of the Industrial Commission, as provided in G.S. 97-84, if not reviewed in due time, or an award of the Commission upon such review, as provided in G.S. 97-85, shall be conclusive and binding as to all questions of fact; but either party to the dispute may, within 30 days from the date of the award or within 30 days after receipt of notice to be sent by any class of U.S. mail that is fully prepaid or electronic mail of the award, but not thereafter, appeal from the decision of the Commission to the Court of Appeals for errors of law under the same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions. The procedure for the appeal shall be as provided by the rules of appellate procedure.

does not violate the duty to represent a client zealously "by avoiding offensive tactics or by treating with courtesy and consideration all persons involved in the legal process." Furthermore, Rule 7.1(b)(1) authorizes a lawyer "where permissible, [to] exercise his or her professional judgment to waive or assert a right or position of the client." It is also observed in the Comment to Rule 7.1 that "...a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so..." Thus, the rule does not require the client's consent prior to notifying the opposing lawyer.

In many situations, professional courtesy urges notification to the other lawyer of the failure to file a pleading. However, a lawyer is not ethically required to do so. In some situations, for example where opposing counsel is known to procrastinate or delay or the interests of the client will be materially prejudiced by notifying opposing counsel, a lawyer may determine that the appropriate tactic is to proceed with obtaining an entry of default or other appropriate remedy.

The Industrial Commission of its own motion may certify questions of law to the Court of Appeals for decision and determination by the Court. In case of an appeal from the decision of the Commission, or of a certification by the Commission of questions of law, to the Court of Appeals, the appeal or certification shall operate on a supersedeas except as provided in G.S. 97-86.1, and no employer shall be required to make payment of the award involved in the appeal or certification until the questions at issue therein shall have been fully determined in accordance with the provisions of this Article. If the employer is a noninsurer, then the appeal of the employer shall not act as a supersedeas and the plaintiff in such case shall have the same right to issue execution or to satisfy the award from the property of the employer pending the appeal as obtains to the successful party in an action in the superior court.

When any party to an appeal from an award of the Commission is unable, by reason of the party's poverty, to make the deposit or to give the security required by law for the appeal, any member of the Commission or any deputy commissioner shall enter an order allowing the party to appeal from the award of the Commission without giving security therefor. The party appealing from the judgment shall, within 30 days from the filing of the appeal from the award, make an affidavit that the party is unable by reason of the party's poverty to give the security required by law. The request shall be passed upon and granted or denied by a member of the Commission or deputy commissioner within 20 days from receipt of the affidavit.

§ 97-86. Please note again that the Notice of Appeal must be received by the Industrial Commission within the 30-day deadline. (Appendix C, Sample Notice from the Industrial Commission with Full Commission Opinion and Award).

In addition, Rule 04 NCAC 10A .0703 allows the filing of a Motion to Reconsider with the Full Commission:

(a) The time to file a notice of appeal, and bonds therefrom, including in forma pauperis affidavits, to the North Carolina Court of Appeals from the Full Commission is governed by the provisions of G.S. 97-86.

(b) A motion to reconsider or to amend an award of the Full

Commission shall be filed within 15 days of receipt of notice of the award. An award of the Full Commission is not final until the disposition is filed by the Commission on the pending motion to reconsider or to amend an award.

Rule 04 NCAC 10A .0703. **Thus, you have 15 days to file a Motion for Reconsideration of a Full Commission Opinion and Award, and this will toll the time for filing Notice of Appeal to the Court of Appeals.** The 30 days to file the Notice of Appeal to the Court of Appeals will run from the receipt of the Order on the Motion for Reconsideration.

II. DECIDING WHETHER TO APPEAL A DEPUTY COMMISSIONER OPINION AND AWARD.

After determining your appeal deadline, you will next need to evaluate the Deputy Commissioner Opinion and Award to determine if you want to file an appeal or not. It is a good practice to review the Opinion and Award and then call your client to discuss the Opinion and Award. You need to advise your client of the options. Sometimes, you may want to appeal because you lost on your issues. Sometimes, you may feel that you have to appeal because the deputy did not address all of the issues in contention. If you are sure that you are appealing, then go ahead and appeal. There is no need to wait for the deadline to draw near.

There may also be times when you are not going to appeal unless the other side decides to appeal. This would most likely occur if you won the majority of your issues but lost on a smaller side issue. If you are not going to appeal unless the other side is going to appeal, reach out to the opposing counsel and advise him or her of this. Ask to be advised if he or she plans to file notice of appeal. Most opposing counsel will comply with this request; even so, you need to make sure that you do not miss your deadline to

appeal just because you are waiting to see what the other side is going to do—the safe bet is to appeal within the deadline if you want to preserve your opportunity to file a Form 44 and appellant brief before the Full Commission.

There are two lines of cases on whether or not you can argue errors of the deputy commissioner before the Full Commission if you did not file notice of appeal before the Full Commission. One line follows the premise that it is the Full Commission’s duty to decide all matters in controversy, such that the failure to appeal is not dispositive on whether you can argue errors of the deputy before the Full Commission. The other line follows the premise that if you do not appeal, you do not get to argue errors. This latter line of cases appears to be where the appellate courts are these days.

In Joyner v. Rocky Mount Mills, 92 N.C. App. 478, 374 S.E.2d 610 (1988), the defendants appealed to the Full Commission, but the plaintiff did not. The Full Commission refused to rule on an issue that the plaintiff had advanced at hearing and held that the issue had not been preserved for review. The Court of Appeals rejected this rationale and directed that

When the matter was “appealed” to the full Commission by defendants it was the duty and responsibility of the full Commission to decide all of the matters in controversy between the parties. Indeed, if necessary, the full Commission should have conducted a full evidentiary hearing to resolve all matters embodied in plaintiff’s claim.

Id. at 482, 374 S.E.2d at 613. In Vierregge v. N.C. State University, 105 N.C. App. 633, 414 S.E.2d 771 (1992), the Court of Appeals cited Joyner with approval and indicated that the Full Commission is not an “appellate” court and must resolve all issues in controversy between the parties. See id. at 639, 414 S.E.2d at 775.

On the other hand, in Hurley v. Wal-Mart Stores, Inc., 219 N.C. App. 607, 723 S.E.2d 794 (2012), the Court of Appeals held that

Here, defendants appealed to the full commission but, as noted above, the only issues raised in their Form 44 were related to the deputy commissioner's award of attorney's fees pursuant to N.C. Gen. Stat. § 97-90; **defendants did not challenge any of the deputy commissioner's findings or conclusions regarding plaintiff's compensable injury to his right knee or the award of payment for treatment for that condition and, therefore, those determinations of the Deputy Commissioner were not at issue and were *not* before the full commission for review.** We have stated that “[w]hen the matter is ‘appealed’ to the full Commission pursuant to G.S. 97-85, it is the duty and responsibility of the full Commission to decide all of the matters *in controversy* between the parties.” *Viergege v. N.C. State University*, 105 N.C. App. 633, 638, 414 S.E.2d 771, 774 (1992) (citation omitted) (emphasis added). Defendants having filed a Form 44 are “entitled to have the full Commission respond to the questions directly raised by [their] appeal.” *Id.* at 639, 414 S.E.2d at 774. Despite the lack of any issue “in controversy” on appeal to the full commission, and presumably any argument, regarding the compensability of plaintiff's injury, the full commission proceeded to address the facts and issues of compensability at length, to the exclusion of the only issue specifically raised by defendants' appeal of the deputy commissioner's award.

Id. at 612-13, 723 S.E.2d at 797 (emphasis added). This language is not totally dispositive on the issue because it discussed an issue that was not in controversy (presumably an issue could still be in controversy even if neither party appealed the issue). However, in two recent cases, Reed v. Carolina Holdings, ___ N.C. App. ___, 796 S.E.2d 102, (2017) and Bentley v. Jonathan Piner Construction, ___ N.C. App. ___, ___ S.E.2d ___, 2017 N.C. App. LEXIS 561 (2017), the Court of Appeals dismissed appeals on issues that were not raised in the Form 44 and preserved for Full Commission review.

In Reed, the Court of Appeals held as follows:

Defendants argue they preserved the issue of attorney's fees on appeal to the Full Commission because the fifteenth—and last—

assignment of error in their Form 44 referred to the Deputy Commissioner's award of attorney's fees. Assignment of Error 15 stated:

For all the reasons stated above, Award #2 is contrary to law, is not supported by the findings of fact and is contrary to the competent and credible evidence of record.

Although neither the word "attorney" nor the word "fee" is mentioned in the assignment of error, Paragraph No. 2 under the heading "Award" in the Deputy Commissioner's Opinion and Award provides for the award of attorney's fees. Therefore, the fifteenth assignment of error could be said to identify the attorney's fee award in general. As for the basis of the objection, however, the assignment simply states it is "[f]or all the reasons stated above" The reasons stated above, *i.e.*, assignments of error 1 through 14, challenge factual findings and conclusions of law related to whether Mr. Reed requires attendant care and whether Mr. Reed and his mother are entitled to reimbursement for attendant care services. So Defendants' objection to the award of attorney's fees appears to be based solely on their objections to the award of attendant care compensation. None of the prior assignments challenge the Commission's authority to award attorney's fees to be deducted from attendant care compensation.

The fifteenth assignment of error is similar to the assignment of error that this Court found insufficient to preserve a challenge to a deputy commissioner's award of attorney's fees in *Adcox v. Clarkson Bros. Constr. Co.*, 236 N.C. App. 248, 254, 763 S.E.2d 792, 796 (2015). That assignment of error challenged an award on the grounds that it is based upon Findings of Fact and Conclusions of Law which are erroneous, not supported by competent evidence or evidence of record, and are contrary to the competent evidence of record, and are contrary to law: Award Nos. 1-3.

Id.

Although the assignment of error in *Adcox* mentioned the paragraph number corresponding to attorney's fees in the deputy commissioner's award, this Court held that the generalized assignment "covers everything and touches nothing." *Id.* at 255, 763 S.E.2d at 797 (citation and quotation marks omitted). The assignment did "not state the basis of any objection to the attorneys' fee award with sufficient particularity to give [the] plaintiff notice of the legal issues that would be addressed by the Full Commission such that he could adequately prepare a response." *Id.* (citation omitted). The Court in *Adcox* compared the

insufficient assignment of error there to the appellant's assignment of error in Walker v. Walker, 174 N.C. App. 778, 782, 624 S.E.2d 639, 642 (2005). Adcox, 236 N.C. App. at 255, 763 S.E.2d at 797. The assignment of error in Walker, analogous to that in Adcox and in this case, asserted that several rulings of the trial court were "erroneous as a matter of law." Walker, 174 N.C. App. at 782, 624 S.E.2d at 642. This Court held that the assertion "that a given finding, conclusion, or ruling was 'erroneous as a matter of law' completely fails to *identify* the issues actually briefed on appeal." *Id.* (emphasis in original).

Reed, ___ N.C. App. ___, 792 S.E.2d at 106-08. In Bentley, the Court of Appeals held the same:

In the present case, Plaintiff sent a letter and notice of appeal from Deputy Shipley's opinion and order to the commission. After receiving an acknowledgment of his appeal, Plaintiff filed a Form 44, along with a brief, neither of which raise the issue of whether a deputy commissioner may issue an opinion and award when he or she was not present at the hearing and did not hear the evidence. We hold that Plaintiff's failure to raise this issue before the Commission bars his ability to raise it in this Court in the first instance. Therefore, we deem this argument waived.

Bentley, ___ N.C. App. at ___, ___ S.E.2d at ___, 2017 LEXIS 561 at 10-11. Thus, if you do not file Notice of Appeal and raise the issue with particularity in your Form 44, be prepared to lose the ability to argue this issue at the Full Commission or beyond.

Remember that the Full Commission is not a true appellate court in the sense that it has the power to take evidence and is the ultimate fact-finder in the case; as a result, it is possible to raise issues for the first time in a Form 44. In Bowman v. Cox Toyota Scion, 224 N.C. App. 1, 737 S.E.2d 384 (2012), the Court of Appeals held that it was permissible to challenge the foundation of evidence for the first time before the Full Commission (note that the party challenging the foundation of the evidence had appealed and filed a Form 44 and appellant brief addressing this issue):

In *Joyner v. Rocky Mount Mills*, 92 N.C. App. 478, 374 S.E.2d 610 (1988), the plaintiff appealed from an order entered by a deputy commissioner to the Commission, which ruled that the plaintiff was not entitled to assert a claim for future medical expenses before the Commission "because the issue of future medical expenses was not 'properly preserved' under the Commission's rules." *Joyner*, 92 N.C. App. at 480, 374 S.E.2d at 612. In addressing the validity of this determination, we stated that: When the matter was "appealed" to the full Commission by defendants it was the duty and responsibility of the full Commission to decide all of the matters in controversy between the parties. . . . [I]t is the duty of the Commission to consider every aspect of plaintiff's claim whether before a hearing officer or on appeal to the full Commission. The Commission may not use its own rules to deprive a plaintiff of the right to have his case fully determined. Thus, the Commission's statement . . . that "the issue of payment of future medical expenses is not properly preserved" will not support the order. We point out, although it hardly need be repeated, that the "full Commission" is not an appellate court in the sense that it reviews decisions of a trial court. *Joyner* at 482, 374 S.E.2d at 613. As a result, "the full Commission has the duty and responsibility to decide all matters in controversy between the parties . . . even if those matters were not addressed by the deputy commissioner." *Perkins v. U.S. Airways*, 177 N.C. App. 205, 215, 628 S.E.2d 402, 408 (2006) (quoting *Payne v. Charlotte Heating & Air Conditioning*, 172 N.C. App. 496, 501, 616 S.E.2d 356, 360 (2005) (internal quotation marks omitted), *appeal dismissed*, 360 N.C. 483, 632 S.E.2d 489 (2006)), *disc. review denied*, 361 N.C. 356, 644 S.E.2d 231 (2007). Thus, the mere fact that a particular issue was not raised before a deputy commissioner does not, standing alone, obviate the necessity for the Commission to consider that issue.

As a general proposition, the appellate courts have looked to the contents of an appealing party's Form 44, rather than to the record before the Deputy Commissioner, in order to identify the issues that were properly before the full Commission. In *Payne*, the Deputy Commissioner sustained the defendants' objection to consideration of the plaintiff's claim for death benefits. The plaintiff specifically assigned as error "the Deputy Commissioner's decision" not to review the plaintiff's claim for death benefits "in her Form 44, 'Application for Review.'" *Payne*, 172 N.C. App. at 501, 616 S.E.2d at 360. In response to the defendants' argument that the death benefits issue was not properly before the Commission, we held that:

[A] "plaintiff, having appealed to the full Commission pursuant to [N.C. Gen. Stat. §] 97-85 and having filed his Form 44 'Application for Review,' is entitled to have the full Commission respond to the questions directly raised by his appeal." Thus, once plaintiff included the issue of death benefits in her Form 44, defendants were on notice that the Full Commission would be required to address that issue. *Payne* at 501, 616 S.E.2d at 360 (quoting *Vieregge v. N.C. State University*, 105 N.C. App. 633, 639, 414 S.E.2d 771, 774 (1992)). Likewise, in *Hurley v. Wal-Mart Stores, Inc.*, N.C. App. , 723 S.E.2d 794 (2012), the defendants, who had appealed from a deputy commissioner's order to the Commission, identified two issues in their Form 44. The Commission failed to decide the specific issues listed in the Form 44 and addressed other issues instead. On appeal, we stated that "the full commission addressed issues other than the award of attorney's fees, although this was the only issue raised by defendants' Form 44 Application for Review" and held that "[t]he full commission did not have authority to address these additional issues under the Workers' Compensation Rules of the North Carolina Industrial Commission." *Hurley*, ___ N.C. App at ___, 723 S.E.2d at 796. Similarly, in *Vieregge*, 105 N.C. App. at 639, 414 S.E.2d at 774-75, we held that the "plaintiff, having appealed to the full Commission pursuant to [N.C. Gen. Stat. §] 97-85 and having filed his Form 44 'Application for Review,' is entitled to have the full Commission respond to the questions directly raised by his appeal;" that the Commission "entered an order affirming the decision of the Deputy Commissioner as if it were an appellate court;" and that, "[a]s we have said previously, the North Carolina Industrial Commission is not an appellate court." (citing *Joyner*, 92 N.C. App. 478, 374 S.E.2d 610). Thus, this Court has consistently utilized the issues outlined in the appealing party's Form 44 for the purpose of identifying the issues that the Commission was required to address on appeal from an order entered by a deputy commissioner.

Finally, this Court has specifically rejected a contention that an appellant must obtain a ruling from a deputy commissioner in order to properly raise an issue before the Commission. In *Clark v. ITT Grinnell Ind. Piping, Inc.*, 141 N.C. App. 417, 539 S.E.2d 369 (2000), *remanded on other grounds for reconsideration in light of Austin v. Continental Gen. Tire*, 354 N.C. 344, 553 S.E.2d 680 (2001), 354 N.C. 572, 558 S.E.2d 867 (2001), the defendants appealed to this Court from a Commission order. On appeal, the defendants argued that the Commission had utilized the wrong statute in the course of its analysis. In response, the plaintiff asserted that: [the Court] should not reach this issue because "it

was not raised until after all the evidence had been submitted, the case had been decided by the Deputy Commissioner, and was on appeal before the Full Commission." However, it is the Commission's duty to consider every aspect of the claim whether before the hearing officer or on appeal to the Commission. . . . Accordingly, the fact that this issue was not raised until it was reviewed by the Commission is of no consequence to our appellate review of the case. *Clark*, 141 N.C. App. at 426, 539 S.E.2d at 374 (citing *Joyner*, 92 N.C. App. at 482, 374 S.E.2d at 613). Thus, for all of these reasons, we conclude that Plaintiff, who challenged the admissibility of Defendants' video evidence in his Form 44, was not procedurally barred from obtaining Commission review of this issue.

Id. at 11-17, 737 S.E.2d at 388-89 (footnotes omitted).

The bottom line is that the only safe bet is to file notice of appeal if you have any issues to which you want to assign error and argue before the Full Commission; this applies even if you won most of your issues before the deputy. To err on the side of caution, you should always file notice of appeal if you want to be able to argue that the deputy commissioner erred in the Opinion and Award. You must then allege the errors with particularity in your Form 44 in order to preserve those issues for review.

You may run into a situation in which you and your client do not agree on whether to appeal a case or not. Please note 04 NCAC 10A .0617(d) of the Workers' Compensation Rules, which states as follows:

(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.

04 NCAC 10A .0617(d) (emphasis added).

III. FILING AND CONTENT OF THE NOTICE OF APPEAL.

If you decide to appeal, the next step is filing the notice of appeal. Rule 701(a) of the Workers' Compensation Rules addresses the content of your notice of appeal and requires

A letter expressing a request for review is considered an application for review to the Full Commission within the meaning of G.S. 97-85, provided that the letter specifies the Order or Opinion and Award from which appeal is taken.

04 NCAC 10A .0701(a). (Appendix E, Sample Notice of Appeal to the Full Commission). This is directed to the Docket Director and filed via EDP.

IV. YOUR FULL COMMISSION BRIEF.

You need to be familiar with the style and formatting requirements for Full Commission briefs. Below are the applicable rules:

- “Case citations shall be to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter, and when possible, to the South Eastern Reporter. If no reporter citation is available at the time a brief is filed or if an unpublished decision is referenced in the brief, the party citing to the case shall attach a copy of the case to its brief.” 04 NCAC 10A .0701(g).
- “Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute unworthy acts or motives to opposing counsel.” 04 NCAC 10A .0701(g).
- “Briefs to the Full Commission shall not exceed 35 pages, excluding attachments.” 04 NCAC 10A .0701(i).
- “No page limit shall apply to the length of attachments.” 04 NCAC 10A .0701 (i).
- “Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-justified right margins.” 04 NCAC 10A .0701(i).
- “Each page of the brief shall be numbered at the bottom of the page.” 04 NCAC 10A .0701(i).
- “When a party quotes or paraphrases testimony or other evidence from the appellate record in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetic entry that designates the source of the quoted or paraphrased material

and the page number within the applicable source. The party shall use ‘T’ to refer to the transcript of hearing testimony, ‘Ex’ for exhibit, and ‘p’ for page number. For example, if a party quotes or paraphrases material located in the hearing transcript on page 11, the party shall use the following format ‘(T p 11),’ and if a party quotes or paraphrases material located in an exhibit on page 12, the party shall use the following format ‘(Ex p 12).’” 04 NCAC 10A .0701(i).

- “When a party quotes or paraphrases testimony in the transcript of a deposition in the party's brief, the party shall include the last name of the deponent and the page on which such testimony is located. For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of such deposition, the party shall use the following format ‘(Smith p 11).’” 04 NCAC 10A .0701(i).

Your brief should have a Statement of the Case, a Statement of the Facts, an Argument and a Conclusion. Your Statement of the Case should provide a brief recitation of the procedural history of the case. Your Statement of the Facts should provide an overview of the facts. It should be non-argumentative. You should provide a deposition or transcript citation after each factual assertion.

Some attorneys prefer to provide a very brief Statement of the Facts. Some attorneys prefer to provide a more detailed Statement of the Facts. Some attorneys break the Statement of the Facts down by lay testimony, medical testimony and other similar sub-headings. You will figure out which way you prefer as you write your briefs.

Your Argument section needs to make sure to address every issue. If you are the appellant, then you need to make sure to address every issue that you wish to appeal. Address these issues in sub-headings set apart by Roman Numerals. If you are the appellee, then you need to address every issue that your opposing counsel raises in his or her appellant brief.

You need to make sure that you understand the standard of review applicable to cases before the Full Commission. These are not appeals in the traditional sense of the word—the Full Commission is not simply reviewing the Deputy Commissioner Opinion

and Award for errors of law. The Full Commission is able to make its own findings of fact and is the “ultimate fact-finding” body. Adams v. AVX Corporation, 349 N.C. 676, 681, 509 S.E.2d 411, 413 (1998). The Full Commission is not bound by the credibility determinations of the Deputy Commissioner and does not have to give deference to such findings. See id.

You need to make sure to cite the correct law in your brief. For example, if you have a pre-June 24, 2011 case, then different law may apply than that in the current statutes. Citation to unpublished cases is disfavored per Rule 30(e)(3) of the Rules of Appellate Procedure. Make sure that you research the issues and provide pertinent case citations. Distinguish existing precedent as necessary.

Your Conclusion section should succinctly state the relief you are seeking. If you are requesting that the defendants reinstate temporary total disability benefits, provide the date from which these benefits should be reinstated. Make sure that you address all of your requests for relief in your Conclusion.

You should sign your brief and provide the date filed, your name, the party you represent, your contact information (address, phone, fax, email) and your bar number. You need to include a certificate of service.

V. PREPARING YOUR FORM 44.

Your Form 44 is the outline of all of the issues you have with the Deputy Commissioner Opinion and Award. 04 NCAC 10A .0701(d) of the Workers’ Compensation Rules states that you must “state the grounds for the review” and that “[t]he grounds shall be stated with particularity, including the errors allegedly committed by the Commissioner or Deputy Commissioner and, when applicable, the pages in the

transcript on which the alleged errors are recorded.” The rule goes on to state that “[g]rounds for review not set forth in the Form 44 *Application for Review* are deemed abandoned, and argument thereon shall not be heard before the Full Commission.” This is obviously consistent with the recent precedent on this issue, as set forth above.

The Form 44 needs to specify each error alleged and the reason for your allegation of error. If you contend that Finding of Fact 3 is contrary to the greater weight of the evidence, then say that and explain why. If you also allege that Finding of Fact 3 is based upon a misapprehension of the law, then say that, explain why and cite the applicable law. If the finding or conclusion involves a discretionary matter, and you feel that the deputy commissioner abused his or her discretion, then state that and explain why. If the deputy commissioner failed to address an issue or failed to make adequate findings of fact to resolve an issue, then you need to state that as well.

The Form 44 needs to be specific. Commissioners will often look at the Form 44 before looking at the brief so as to ascertain a cursory understanding of the appellant’s issues with the Deputy Commissioner Opinion and Award. If you only state that Finding of Fact 3 is contrary to applicable law, then that really does not tell the Full Commission what your issue is with that finding.

You should sign your Form 44 and print your name beside your signature. It is sometimes difficult for the commissioners to discern who signed the Form 44 just based on the signatures. You should attach additional pages as necessary to fully outline the errors alleged. (Appendix G, Sample Form 44 & Attachment).

VI. EXTENSIONS OF TIME.

04 NCAC 10A .0701(e) of the Workers' Compensation Rules states that "If the matter has not been calendared for hearing, any party may file with the Docket Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative extensions of time exceed 30 days." Most of the time, the matter has not yet been scheduled for hearing when your briefs are due. Call opposing counsel to make sure that there is no issue with the extension, and then file a letter with Docket Director Langdon notifying her of the stipulation. (Appendix H, Sample Stipulation to an Extension of Time).

VII. MOTIONS TO RECEIVE ADDITIONAL EVIDENCE OR AMEND THE RECORD.

Section 97-85 of the General Statutes then states that "if good ground be shown therefor," the Full Commission may "receive further evidence." § 97-85. The Court of Appeals reviews the decision whether to receive additional evidence or not on an abuse of discretion standard. See generally Hall v. Chevrolet Co., 263 N.C. 569, 139 S.E.2d 857 (1965) (holding that this is a discretionary matter with the Full Commission).

In Allen v. K-Mart, 137 N.C. App. 298, 528 S.E.2d 60 (2000), the Court of Appeals held that it was a denial of due process to deprive the opposing party of the right to cross-examine or impeach evidence that is newly admitted pursuant to Section 97-85 of the General Statutes. The Court held as follows:

The opportunity to be heard and the right to cross-examine another party's witnesses are tantamount to due process and basic to our justice system. We agree with defendants that the Commission manifestly abused its discretion by allowing significant new evidence to be admitted but denying defendants the opportunity to depose or cross-examine the physicians, or requiring plaintiff to be examined by experts chosen by defendants. Therefore, we hold

that where the Commission allows a party to introduce new evidence which becomes the basis for its opinion and award, it must allow the other party the opportunity to rebut or discredit that evidence.

Id. at 304, 528 S.E.2d at 64-65. Thus, if the Full Commission does grant a motion to receive additional evidence, it must allow the opposing party the right to cross-examine this evidence. But see Legette v. Scotland Memorial Hospital, 181 N.C. App. 437, 453, 640 S.E.2d 744, 754 (2007) (holding that the defendants had not been prejudiced by the granting of the plaintiff's motion to receive additional evidence because the defendants had the opportunity to, and did, cross-examine the doctor presenting the additional evidence and also noting that the defendants never had asked to take any other additional evidence).

When deciding whether or not to file a motion to receive additional evidence, you will need to look at the facts and circumstances surrounding your particular case. Often these motions are not granted. These motions seem to be granted when there has been some kind of change in circumstances since the hearing. This may be a change in medical treatment or a factual development that requires the taking of additional evidence.

Rule 701(f) addresses motions to supplement the record. It states that

Motions related to the issues for review including motions for new trial, to supplement the record, including documents from offers of proof, or to take additional evidence, filed during the pendency of a request for review to the Full Commission, shall be argued before the Full Commission at the time of the hearing of the request for review, except motions related to the official transcript and exhibits. The Full Commission, for good cause shown, may rule on such motions prior to oral argument.

04 NCAC 10A .0701(f). **If there is a good reason why the Commission should rule upon this request prior to oral argument, make sure that you put that in your motion.**

VIII. ORAL ARGUMENT

When your case is set for oral argument, you will receive an email from the Industrial Commission providing you with the oral argument calendar. **You will not receive a hard copy of the oral argument calendar.** The oral argument calendars are also posted on the Industrial Commission's website at <http://www.ic.nc.gov/ncic/pages/fullcal.htm>. If you receive an oral argument calendar by email, it is a good idea to call or email opposing counsel to make sure he or she also received it.

You will need your ID to enter the Dobbs Building for oral argument. Oral arguments are generally held downstairs on the second floor. You should dress accordingly for oral argument.

You should arrive early to oral argument. You do not want to arrive late. You may want to introduce yourself to your colleagues in the room or even to the clerks who will be sitting at a table in the courtroom. When you attend oral argument, you need to be polite and courteous not only to the commissioners and their clerks, but also to opposing counsel.

When the commissioners enter the courtroom, you should stand to show them respect. When your case is then called at calendar call, you should stand again and state your name and the party you represent.

While other attorneys are arguing their cases, you should sit quietly and pay attention. You do not want to make a lot of noise shuffling papers or looking through files. It is fine to review your notes or quietly review a deposition—you should just avoid anything that would distract from the oral argument going on around you.

If you are the appellant, you will argue first. If both parties have appealed, the parties should discuss the order of argument prior to the call of the calendar. You will have twenty minutes to argue your case. You should save at least five minutes for rebuttal if you are the appellant; if you are the appellee, you will have no opportunity for rebuttal.

Please note that Full Commission oral arguments are recorded. You should keep this in mind when organizing your oral argument, because there is a potential that someone may ultimately read a transcript of the oral argument.

Make sure that you are prepared for oral argument with all of the papers you need. You will need, at a minimum, the deputy commissioner opinion and award, the transcript and paginated exhibits from the Industrial Commission, all deposition transcripts, the briefs of the parties and any pending motions. It is also a good idea to bring a copy of the Full Commission oral argument calendar.

Do not simply read your brief to the Full Commission. The commissioners have already read your brief. You need to be familiar with the record and able to provide specific page citations for the evidence that is important for them to review. Review the entire record the night prior to your argument, make notes of any important pages and tab those pages for easy reference during your argument.

You may get a “hot” bench and have many questions lodged by the commissioners. If you are asked a question, you need to answer the question. Do not dodge the question. If it is a “yes” or “no” question, then you should say “yes” or “no” and then explain your answer. Do not simply launch into a lengthy explanation without first answering “yes” or “no.”

Do not interrupt a commissioner when he or she is asking you a question. Wait for the commissioner to finish his or her question. You should make a list of the points that you need to hit in your argument and simply check them off as you go. If you get a “hot” bench and are answering questions most of the time, you need to find a way to not only answer the questions but to also bring your argument around to the points that you need to hit. If there are any pending motions, you should address the motions in your oral argument.

You should be respectful of your opposing counsel while he or she is arguing. Do not sigh and make faces when he or she says something that you do not like. You should write down any points that you want to make sure to address in your argument if you are the appellee or if you are the appellant preparing for rebuttal. To the extent that you need to look something up in the record while your opposing counsel is arguing, you should do so quietly and so as not to draw attention to yourself.

When your time is up, you need to stop. You should thank the Full Commission for its time. If the Full Commission is on break after your argument, you may want to ask to approach the bench and introduce yourself to the commissioners, if you have not already met them.

IX. THE FULL COMMISSION OPINION AND AWARD.

When you receive the Full Commission Opinion and Award, you need to review it immediately. **Per 2017 N.C. Sess. Laws 57, which the General Assembly ratified in the 2017 long session, the Industrial Commission may now email or mail Full Commission Opinion and Awards.** While the Industrial Commission will have to go through rulemaking on this, you should be aware of this change.

You need to ensure that you promptly calendar the deadline to file notice of appeal and that you contact your client to discuss the Opinion and Award. You will need to advise your client on the options and your recommendations, just as you did with the deputy commissioner Opinion and Award.²

You should also review the Full Commission Opinion and Award to ensure that all issues raised in the Pre-Trial Agreement have been addressed and resolved. If not, you may want to file a motion for reconsideration. If there is something in the Full Commission Opinion and Award that is a blatant legal or factual error that the Full Commission would want to address and fix, then a motion to amend the Opinion and Award or to reconsider the Opinion and Award would be appropriate.

X. INTEREST ON AWARDS PURSUANT TO SECTION 97-86.2 OF THE GENERAL STATUTES.

Any amounts awarded in a Full Commission Opinion and Award are also subject to an interest payment. Section 97-86.2 of the General Statutes states as follows on this issue:

In any workers' compensation case in which an order is issued either granting or denying an award to the employee and where there is an appeal resulting in an ultimate award to the employee,

² This paper only discusses appeals before the Full Commission, but needless to say, you need to be mindful of the Court of Appeals' standards of review when advising your client of your recommendations.

the insurance carrier or employer **shall** pay interest on the final award or unpaid portion thereof from the date of the initial hearing on the claim, until paid at the legal rate of interest provided in G.S. 24-1. If interest is paid it shall not be a part of, or in any way increase attorneys' fees, but shall be paid in full to the claimant.

§ 97-86.2 (emphasis added). This statute is mandatory, not discretionary, and it does not matter who filed the appeal. All that matters is that there is an appeal and an ultimate award to the plaintiff. The interest is paid to the plaintiff only, not the plaintiff's attorney.

In I.C. No. 241740, Moore v. FoamEx (Full Commission Opinion and Award filed 1 April 1999), the Full Commission held that there are two periods over which to calculate the interest to be paid following a Full Commission Opinion and Award: (1) From the first date of disability through the date of the hearing and (2) from the date following the date of the hearing through the date of payment. The first period involves simple interest, and the second period involves compounded interest.

For the first period, the interest is calculated as follows:

For that period, the method is to multiply the number of weeks times the compensation rate to derive the total compensation due. Then count the number of weeks from the date of the initial hearing to the date compensation was paid. Multiply the number of weeks thus derived by the weekly interest rate times the total compensation due for that period. The resulting amount is the interest due for that period of time.

Id. The formula for the interest for periods of disability prior to the hearing is therefore as follows:

((# of days of disability prior to the date of hearing)/7 x compensation rate) x .08 x

((# of days from date of hearing to date of payment)/365)

For the second period, which runs from the date of the initial hearing before the deputy commissioner through the date that the compensation and interest are paid, you must use a more complicated formula:

For that period, each weekly compensation payment due is time weighted and multiplied by the weekly interest rate. The interest thus calculated on each weekly compensation payment is then summed and the resulting amount is the interest due for that period of time.

Id. The interest for this period is also 8% per annum, but it is calculated from the date each weekly compensation payment becomes due through the date paid. I use the program that Will Snyder wrote to obtain the compounded interest figure. This program is located at www.jwsnyder.com/cgi-bin/wcinterest.pl.

When you receive payments pursuant to a Full Commission Opinion and Award, you need to review them to ensure that the numbers are correct and that interest has been included in your client's payment. The interest should be calculated on the entire award, inclusive of attorney's fees. After you calculate the amount of interest owed, you add it to the amount owed to the plaintiff per the Full Commission Opinion and Award because attorneys are not entitled to interest payments per the statute.

XI. MOTIONS PURSUANT TO SECTION 97-88 OF THE GENERAL STATUTES.

Section 97-88 of the General Statutes states as follows:

If the Industrial Commission at a hearing on review or any court before which any proceedings are brought on appeal under this Article, shall find that such hearing or proceedings were brought by the insurer and the Commission or court by its decision orders the insurer to make, or to continue payments of benefits, including compensation for medical expenses, to the injured employee, the Commission or court may further order that the cost to the injured employee of such hearing or proceedings including therein reasonable attorney's fee to be determined by the Commission shall be paid by the insurer as a part of the bill of costs.

§ 97-88. If you receive a Full Commission Opinion and Award awarding your client medical or indemnity benefits following an appeal from a defendant, then you should set a tickler to remind you to file a motion for attorney's fees and costs pursuant to Section 97-88 of the General Statutes.

You may ask for 97-88 attorney's fee even when both parties appeal. These fees are limited to the portion of the case attributable to defending the insurer's appeal, so leave out the time spent preparing the appellant brief. See Troutman v. White & Simpson, Inc., 121 N.C. App., 48, 464 S.E.2d 481 (1995). Provide a procedural history of the case, attach the Form 33, the Deputy Commissioner Opinion and Award, any notices of appeal, and the Full Commission Opinion and Award. Also attach an affidavit of time spent defending the appeal. Outline your experience in the field pursuant to the requirements of Rule 1.5 of the Rules of Professional Conduct and state the hourly rate you are seeking. Attach prior 97-88 or 97-88.1 orders awarding that same hourly rate to you.

It is important to explain to the Full Commission why you feel that you should be awarded 97-88 attorneys' fees. This is not an automatic award.

XII. MISCELLANEOUS POINTS.

Often clients will ask how long it takes to receive a Full Commission Opinion and Award. This happens much more quickly than used to be the case given the quicker turnaround on the transcript. The parties typically receive the transcript within 30 days of the filing of the notice of appeal. You can then anticipate fifty to eighty days for the parties to brief the case. You can then anticipate another month to three months for oral argument. Then you can anticipate approximately three months to receive an Opinion

and Award, although this all depends upon the complexity of the case and the case load of the Full Commission.

You may notice that materials submitted to the deputy commissioner do not make it into the transcript exhibits provided by the Industrial Commission. If this happens, you should contact opposing counsel and ask if he or she has any objection to a motion to amend the record to add those exhibits. This is different than asking for the Full Commission to receive additional evidence, because the deputy commissioner also received and reviewed these items as evidence.

Some practitioners submit a proposed Full Commission Opinion and Award even though this is not required by the rules. This is a good idea if you are the appellant. Also, from time to time, the Full Commission will request that a party prepare a proposed Opinion and Award for the Full Commission's consideration. **This is not a confirmation that the party requested to prepare the proposed Opinion and Award has prevailed in the case.**

When you are submitting written and oral argument to the Full Commission, be mindful of what you say about the deputy commissioner issuing the Opinion and Award. It is fine to assign error and argue these errors, but you must not make personal attacks on the deputies. The deputies are judges, and the Rules of Professional Conduct require you to treat judges with respect and to defend them against unwarranted attacks when necessary. See generally N.C RULES PROF. CONDUCT, R. 8.2, Comments 3 & 4 (2017).

Do not argue outside of the record in your brief(s) and at oral argument. This will not help your case, and it may cause the Full Commission to make findings that are not

supported by the evidence of record. Such findings could cause you to have reversible error in your Full Commission Opinion and Award.

XIII. CONCLUSION

The Full Commission is not a scary place to be once you know the rules of the road. While it is always nice to prevail in a Deputy Commissioner Opinion and Award, most of the time, it is vital that you prevail at the Full Commission. You should be prepared, know your case, know the law, follow the rules and find the ethos of your case to argue at oral argument so that the Full Commission wants to and can find in your favor in its Opinion and Award.