

NORTH CAROLINA INDUSTRIAL COMMISSION

DOBBS BUILDING
430 NORTH SALISBURY STREET
RALEIGH, NORTH CAROLINA 27611
(919) 807 - 2648

SERVICE ACKNOWLEDGEMENT
(Important Notice – Immediate Action Required)

The document attached is being served by facsimile transmission. The document is being transmitted by:

Deputy Commissioner

****PLEASE RETURN FAX ACKNOWLEDGEMENT****

To:

PLEASE CIRCLE EACH CASE THAT IS ASSIGNED TO YOUR FIRM.

I.C. File Nos:

DATE FAXED:

The attached document is:

- Hearing Calendar**
- Opinion & Award
- Order
- Correspondence

The person receiving this notice by facsimile transmission is (1) required to complete and sign this Service Acknowledgement and (2) return the Service Acknowledgement by facsimile transmission to the North Carolina Industrial Commission. You are requested to complete the information below and return the Service Acknowledgment immediately upon your receipt of the Service Acknowledgment. Send the return transmission to:

Facsimile (919) 715-0282

Date received: _____

Law Firm Name: _____

If Solo Practitioner, Name of Attorney: _____

Signature of Person Receiving Facsimile Transmission: _____

NORTH CAROLINA INDUSTRIAL COMMISSION

UNIFORM PRE-TRIAL ORDER

Pursuant to NC General Statutes and Rules of the NC Industrial Commission, this Order shall apply to all workers' compensation cases, except in cases with pro se plaintiffs or non-insured pro se defendants or contempt proceedings. This Order does not apply to cases being filed under the State Tort Claims Act.

ORDER

1. DOCKETING

- a. All workers' compensation cases subject to this Order will be docketed during the second full month following the case clearing mediation status.
- b. Cases identified for docketing will be posted periodically on the Industrial Commission website (www.ic.nc.gov).

2. PRE-TRIAL AGREEMENTS

- a. The parties shall submit a Pre-Trial Agreement to the Deputy Commissioner no later than the third Thursday of the month immediately preceding the month of trial of the case.
 1. The party filing the Form 33 shall deliver the proposed Pre-Trial Agreement to all opposing counsel 10 days prior to the date that the Pre-Trial Agreement is due to be filed with the Industrial Commission.
 2. If counsel are unable to agree on any matter, counsel for the party who filed the Form 33 shall complete and submit a Pre-Trial Agreement on all agreed matters, executed by all parties. Each party may then file a Supplemental Pre-Trial Agreement containing the specific items that were not subject to agreement.
- b. The Pre-Trial Agreement shall be signed by counsel for both parties and shall contain the following:
 1. Statement Confirming Case Ready for Hearing: After reviewing the case and their calendars, the parties or their counsel affirm that they will not require a continuance or removal on the grounds that they have obtained secured leave, are scheduled to appear in a court of greater jurisdiction, did not have an opportunity to mediate because the case bypassed mediation, did not have sufficient time needed to prepare for the hearing, that a party should be added or that the hearing is anticipated to last in excess of four hours, thus requiring a special set.
 2. Stipulated Facts: The parties shall confer and determine all facts that can be stipulated.
 - a. If compensability has been denied, the Pre-Trial Agreement must include the standard stipulations (subject to the Act, employment relationship, insurance coverage, average weekly wage, date of alleged injury, and the dates of any period(s) of time plaintiff was out of work.)
 - b. If compensability has been previously accepted, the Pre-Trial Agreement must include a stipulation regarding what compensation has been paid to plaintiff and what medical reports may be received into evidence.

3. Issues: Both parties shall list all specific issues for trial. Issues not listed will not be tried absent the consent of all parties and the Deputy Commissioner.

4. Industrial Commission Forms: The parties shall identify all material Industrial Commission Forms that have been filed and the date of filing.

- a. Defendants shall provide Plaintiff with a Form 22 if the parties have not reached a stipulation regarding average weekly wage.
- b. The Form 22 provided by Defendants shall be filed with the Industrial Commission.

5. Lay Witnesses: All lay witnesses to testify at trial shall be listed.

6. Expert Witness and IME Testimony: The parties shall identify and list all expert witnesses, including but not limited to, IME doctors to be deposed post-hearing. The parties shall schedule and include the dates of the depositions, so that all depositions may be completed within 60 days of the hearing. Requests to approve expert witness fees shall be submitted within the time frames established in Section (3)(a) below.

7. Discovery: The parties shall certify that all pre-trial discovery has been completed and all relevant documents have been exchanged.

8. Exhibits: The parties shall list all exhibits to be offered at the hearing and produce all exhibits to the opposing side within a reasonable period of time before the hearing. The parties shall state that all stipulated Exhibits, including, but not limited to, relevant medical records and Industrial Commission Forms, are to be admitted into evidence. Exhibits may be submitted up to and including the start of the hearing not inconsistent with this provision.

- a. All stipulated Exhibits, including medical records and Industrial Commission forms, must be bound together and sequentially paginated. The stipulated Exhibits shall contain an index page listing all documents submitted and the first page of their location.
- b. Any document not subject to stipulation that will be proffered at trial shall be specifically identified.

9. Length of trial: The parties shall state the estimated length of trial.

- c. In any case where the injury is alleged to be due to repetitive motion or cumulative trauma, the parties shall confer and stipulate a written job description or videotape of the job at issue.
- d. The format of the Pre-Trial Agreement shall be substantially as shown in the Form Order on Final Pre-Trial Conference as contained in the General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure with information as indicated herein included.

3. POST-TRIAL DEPOSITIONS AND CLOSING OF THE RECORD

a. Depositions

1. The parties shall be prepared at trial to discuss the scheduling of all depositions, and the timing of depositions.
2. If not filed in the Pre-Trial Agreement, the parties shall file with the Deputy Commissioner within 15 days following the trial a list specifically identifying all expert witnesses, including, but not limited to, IME doctors to be deposed and the dates of their depositions.

3. Within ten (10) days after receipt of an expert's fee invoice, Defendants' counsel SHALL submit to the undersigned, via email, a request to approve such expert's fee. In these requests, counsel SHALL provide to the undersigned, in a cover letter along with the invoice (if provided to counsel), the following: (1) the name of the expert deposed; (2) his/her practice's name; (3) his/her fax number; (4) his/her area of specialty and board certifications, if any; and (5) the exact length of the deposition and the length of time the expert spent preparing for the deposition. Counsel SHALL also submit a proposed Order that shows the expert's name, practice name and fax number under the "Appearances" section. The undersigned will serve each expert witness fee order on the expert for whom the fee is approved. Failure to make prompt payment to an expert witness following the entry of a fee order will result in the assessment of a ten percent (10%) penalty.
4. Deposition transcripts shall be submitted no later than 30 days after the deposition is completed.
5. Any extensions of time to complete depositions should be addressed to the Deputy Commissioner.

b. Briefs and Proposed Opinions and Awards

1. All briefs and proposed opinions must be submitted within 45 days of the last date that a deposition was taken and no later than 135 days from the date of hearing.
2. Any extensions of time to complete submission of briefs and proposed opinions and awards should be addressed to the Deputy Commissioner.

4. SANCTIONS

Failure of any party to fully or timely comply with this Pre-Trial Order shall result in the imposition of appropriate sanctions, including but not limited to, preclusion of evidence, assessment of court costs, assessment of attorney's fees in favor of the non-failing party, and such other sanctions as the Deputy Commissioner may deem appropriate.

NOTICE TO PARTIES

NORTH CAROLINA INDUSTRIAL COMMISSION

Deputy Commissioner

4336 Mail Service Center, Raleigh, N.C. 27699-4336 Phone: (919) 807-2501 Fax: 919-715-0281

E-mail:

I. WHEN CASE WILL BE HEARD

Parties should expect that cases will be heard in the order stated within the discretion of the presiding Deputy Commissioner. Even if other cases are scheduled at the same time as your case, you should be ready to proceed at the scheduled time. If your hearing is expected to take more than four hours, please notify the Deputy Commissioner in order that the matter may be specially set so it will not disrupt the remainder of the scheduled cases.

II. UNREPRESENTED PARTIES

Persons not represented by an attorney are advised to read the attached notice for more specific information concerning preparation for hearing. **It is strongly recommended that unrepresented parties consider retaining an attorney to represent their interests at hearing.** For an attorney in your area, you may consult your local telephone directory, or the North Carolina Bar Association Lawyer Referral Service at (919) 677-8574 or toll free at 800-662-7660.

III. PRE-TRIAL AGREEMENT AND STIPULATIONS

Please refer to the attached Uniform Pre-Trial Order for information.

IV. MOTIONS

Please review the docket as soon as you receive it. All Motions to Continue, Dismiss, or Remove should be directed to Deputy Commissioner in writing, along with a proposed order. Motions for Continuances will rarely be granted and only in compelling circumstances when requested well in advance of a scheduled hearing. Motions for Removal based upon a resolution of all pending issues will be granted only upon submission of written notification or a Consent Order that details the terms of the resolution. Parties submitting motions by facsimile should call to confirm receipt of the motion. For further direction, refer to Rule 609 of the Workers' Compensation Rules of the North Carolina Industrial Commission.

V. SETTLEMENTS

The parties should inform the Deputy Commissioner of any compromise settlement agreement in a timely manner prior to the scheduled hearing. Costs may be imposed against a party or parties for failure to comply. If the parties resolve all pending issues for hearing by means other than a compromise settlement agreement, a Motion for Removal should be filed. Motions for Removal based upon a resolution of all pending issues will be granted only upon submission of written notification or a Consent Order that details the terms of the resolution.

NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).

(With respect to the provisions of Rule 45 cited below as they apply to this subpoena, the North Carolina Industrial Commission is the “court” and “court in the county.” All motions regarding this subpoena shall be filed with the North Carolina Industrial Commission pursuant to Rule 04 NCAC 10A .0609.)

(c) Protection of Persons Subject to Subpoena

(1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11 [of the North Carolina Rules of Civil Procedure]. Each of the following grounds may be sufficient for objecting to a subpoena:

- a. The subpoena fails to allow reasonable time for compliance.
- b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
- c. The subpoena subjects a person to an undue burden or expense.
- d. The subpoena is otherwise unreasonable or oppressive.
- e. The subpoena is procedurally defective.

(4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically

stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to compel; expenses to comply with subpoena. - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.

(7) Trade secrets; confidential information. - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to quash; expenses. - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties in Responding to Subpoena

(1) Form of response. - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(2) Form of producing electronically stored information not specified. - If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.

(3) Electronically stored information in only one form. - The person responding need not produce the same electronically stored information in more than one form.

(4) Inaccessible electronically stored information. - The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the limitations of Rule 26(b)(1a) [of the North Carolina Rules of Civil Procedure]. The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.

(5) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: *If you have any questions about being subpoenaed as a witness, you should contact the person named on Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."*

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding officer, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

IMPORTANT NOTICE TO UNREPRESENTED PARTIES

If you are not represented by an attorney, you are responsible for preparing your case to be heard on the date indicated.

Preparation for the hearing includes subpoenaing any witnesses that you wish to call to testify at the hearing and obtaining copies of your medical records related to this case.

- A. If you choose to have an attorney represent you, you should contact the attorney immediately so that he or she will have sufficient time to prepare for the hearing. As worker's compensation cases involve medical and legal issues, **it is strongly recommend that you consider retaining an attorney** to represent their interests at hearing. Continuances of your hearing date will only be granted under compelling circumstances and only when made **well in advance** of the hearing date. For an attorney in your area, you may consult your local telephone directory, or the North Carolina Bar Association Law Referral Service website is www.ncbar.org or contact them at 919-677-0561 or 1-800-662-7407.
- B. If you have any questions, please call the Commission's Information Specialists at 919-807-2501 or 1-800-688-8349 or E-mail them at InfoSpec@ic.nc.gov . You may also write them at:

Workers' Compensation Information Specialists
N.C. Industrial Commission
4333 Mail Service Center
Raleigh, NC 27699-4333

- C. Bring to the hearing all written medical reports regarding your treatment, the cause of your condition, time out of work, and permanent disability.
- D. **TO SUBPOENA WITNESSES:**
1. Complete an Industrial Commission Form 36 (Subpoena for Witness) for each witness you want to subpoena. A Form 36 is attached for your use. You may obtain additional copies of the Form 36 from the Industrial Commission website (www.ic.nc.gov) or by calling us at 919-807-2500.
 2. Contact the Industrial Commission to have the Form 36 (Subpoena for Witness) signed by the appropriate individual.
 3. Deliver the Form 36 (Subpoena for Witness) to the sheriff of the county in which the witness lives or works, and pay the fee for service.