

HOW TO PREPARE FOR A WORKERS' COMPENSATION HEARING

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I. SCOPE NOTE

This article is instructive on preparing for a workers' compensation hearing at the Deputy Commissioner level before the North Carolina Industrial Commission, and it is designed to address practitioners who are new to the Workers' Compensation system, and to those who may find the occasion to handle a workers' compensation case. Basic background information is provided on the North Carolina Industrial Commission, as well as tips for having a successful hearing. Instructions are given on Industrial Commission rules and procedures for hearing, such as filing Industrial Commission forms, how hearings are set, and requesting a continuance, removal or dismissal; as well as how to effectively present evidence at the hearing. Additionally, how to present witness testimony is discussed, in addition to suggestions for attorney advocacy when in workers' compensation hearings.

II. INTRODUCTORY INFORMATION

A. The North Carolina Industrial Commission

The **North Carolina Industrial Commission** (hereinafter referred to as "NCIC" or "IC") administers all workers' compensation cases and all tort claims filed against state agencies. **Pamela T. Young**, serves as **Chair** of the Commission and as a member of the **Full Commission**. Other Full Commission members include **Bernadine S. Ballance, Laura K. Mavretic, Danny L. McDonald, Staci Meyer, Christopher Scott, and Dianne C. Sellers**. Among other important duties, the Full Commissioners set policies for the Industrial Commission, sit in judicial panels of three (3) to hear cases appealed from the Deputy Commissioner level, and issue written decisions in those cases.

Pertinent phone numbers for the various sections of the Commission, and basic information pertaining to workers' compensation cases can be found in the most current **Bulletin for the North Carolina Industrial Commission**, and a wealth of information, including workers' compensation case law decisions, can be obtained by visiting our website at <http://www.ic.nc.gov/>. Practitioners are **strongly** encouraged to frequently visit our website, as important messages and information are posted there on a regular basis.

B. The Law and The Rules

1. **Chapter 97** of the North Carolina General Statutes includes the workers' compensation statutes and applicable case law in its annotated version. Two online resources to these statutes are as follows: the website for the North Carolina General Assembly at <http://www.ncga.state.nc.us/>; and the Industrial Commission website at <http://www.ic.nc.gov/>.

2. **The Rules of the Industrial Commission**, particularly Article VI for contested cases, are extremely important and the practitioner should familiarize himself with those as well. The Rules can be found on our website at <http://www.ic.nc.gov/>.

C. The Deputy Commissioners

Deputy Commissioners are the judges who conduct hearings in contested cases at the trial level and issue written decisions in those cases. All formal hearings are held before a Deputy Commissioner and are usually in a live courtroom setting. Form 24 Hearings are conducted via telephone, by *Special Deputy Commissioners*, who are members of the Executive Secretary's Office of the Industrial Commission.

Our current Deputy Commissioners are as follows:

Wanda Blanche Taylor serves as our **Chief Deputy Commissioner**. Chief Deputy Commissioner Taylor also hears *Emergency Medical Motions* via phone conference.

Other Deputy Commissioners include: **Phillip A. Baddour, III; John B. Deluca; Kim Ledford; J. Brad Donovan; Stephen Gheen; James G. Gillen; George T. Glenn, II; Myra L. Griffin; George R. Hall, III; Robert J. Harris; Phillip A. Holmes; Victoria Homick; Bradley W. Houser; Adrian A. Phillips; Robert W. Rideout, Jr.; Ronnie E. Rowell; Chrystal Redding Stanback; and Theresa Bunce Stephenson.**

John C. Schafer, also a Deputy Commissioner, serves as the Commission's Mediation Coordinator.

Sandra Cortes is the Deputy Trial Administrator, who primarily handles the setting of cases for hearing and is Legal Assistant to Chief Deputy Commissioner Wanda Taylor.

It is equally important to become familiar with each Deputy Commissioner's legal assistant, as you are more likely to have more contact with the assistant than with the Deputy Commissioner on procedural matters.

III. **KNOW THE RULES OF THE ROAD: INDUSTRIAL COMMISSION RULES AND PROCEDURES FOR HEARINGS – Filing IC Forms; How Hearings are Set, Requesting Continuances/Removals/Dismissals**

So much of the success associated with an effective workers' compensation hearing occurs prior to the hearing. One of the greatest challenges is learning to navigate through the Industrial Commission procedures. The workers' compensation practice is highly forms-oriented, so becoming acquainted with those forms and the filing requirements for the same

is extremely important. The Industrial Commission has adopted sanction guidelines for not being in compliance with filing requirements which could cost you and your client unnecessary expense if those requirements are not timely met. This manuscript does not seek to be the “bible” for forms filing; however, the basic forms that may be associated with a hearing are discussed in order to provide guidance on this area.

A. Filing Industrial Commission Forms

1. A **list of commonly used forms** can be found in the **Appendix, Attachment A**. The COMPLETE list of forms can be found on the IC website: <http://www.ic.nc.gov>. Please note that the information contained on various forms have the potential for being raised as issues in a hearing, so the accuracy of that information, as well as adhering to the filing timelines and utilizing the latest version of those forms is extremely important. Newly revised forms include: **Form 17, 18, 19, 25R, 26, 26A, 60 & 63**. The Full Commission minutes, summary and complete instructions regarding forms can be found on the Industrial Commission website. The Industrial Commission forms may be downloaded from the website and access to fillable PDF and Microsoft Word versions of these forms can be found on the IC website.
2. **The Form 18 (revised 8/6/08)** - If you are an attorney representing a claimant, the first form you want to ensure is filed with the Commission is a **Form 18** (the employee's report of injury). It is the equivalent of a complaint filed in a civil action in the General Court of Justice and tolls the two-year statute for filing a workers' compensation claim. Please list all injured body parts or conditions being claimed as compensable, and consider filing an **Amended Form 18** if additional injuries or conditions arise subsequent to the filing of the original Form 18.
3. **The Form 19 (revised 8/6/08)** - If you are an attorney representing a defendant-employer and/or insurance carrier, be sure your client has filed a **Form 19**, (the employer's report of injury), within five (5) days of knowledge of the injury. Also, “within 30 days after receipt of the Form 18, you must file a **Form 60, 61, or 63** to admit, deny or pay without prejudice. The failure to comply with this requirement will subject you to sanctions.” (Industrial Commission website <http://www.ic.nc.gov>; please also see **N.C. General Statutes Section 97-18** and **Industrial Commission Rule 601(2)**)
4. **The Form 33 Request That Claim Be Assigned For Hearing – (IC Rule 602)**. The **Form 33** (see **Appendix, Attachment B**) is the form that triggers the setting of a case for hearing, and it can be filed by either party, but is most often filed on behalf of a claimant/employee. Please provide complete information on this form, particularly the contact information for the employee and the employer and carrier. State with *specificity* the reason(s) why this claim needs to be set for hearing. Of particular note is the section entitled “Estimated length of hearing.” ***Make your best estimate of how long it will take for this hearing to be completed, since hearings that are estimated to take four (4) hours or more are to be set on a special docket.***

Current policy at the Commission automatically orders all cases into mediation in which a **Form 33** Request for Hearing has been filed. The Form 33 is filed with the Dockets Section of the Industrial Commission. Filing a Form 33 basically certifies that this claim is READY to be heard, so don't file this form unless you are prepared to proceed with a hearing.

5. **The Form 33R Response to Request That Claim Be Assigned for Hearing – (IC Rule 603)**. The **Form 33R** (see **Appendix, Attachment C**) is the form that is filed in response to the Form 33 and can be filed by either party, but is most often filed on behalf of an employer/insurance carrier/third party claims administrator. Again, please provide complete information on the form, include a detailed explanation as to why the parties are unable to agree on the issues in dispute. The estimated time of hearing section on this form is equally important, so please make your best estimate, whether it corresponds with the other parties' estimate or not.

The Form 33R is filed with the Dockets Section of the Industrial Commission as well.

6. **Expedited Medical Motions Procedures** – Currently, Deputy Commissioners Chrystal Redding Stanback and Theresa Stephenson are handling the expedited medical motions. Please see the Industrial Commission website for a copy of the procedures. Depending on the nature of the issue, you may be able to resolve your issue without a full hearing.

B. How Hearings are Set

1. **When?** Generally speaking, *a hearing is set within 30 - 60 days of a failed mediation (where the parties have reached an impasse)*. A **Hearing Calendar** (see **Appendix, Attachment D**), along with a **Pre-Trial Order and Notice to Parties** (see **Appendix, Attachment E**) is sent to the parties or their legal representatives which lists the date, time and place for a hearing (this will be discussed in more detail below.) Calendars for hearings are generally sent to the parties between four to six weeks prior to the dates scheduled for hearing. However, prior to a case being set on a hearing calendar the cases to be set for hearing are published on our website prior to being placed on the calendar. (Please see **“MASTER LIST OF CASES FOR DOCKETING”** on the website). Therefore, please check the website periodically to determine if one of your cases is in line to be set for hearing. The cases are listed by geographic Region/Industrial Commission File Number, by the Plaintiff, Defendant, and by the Deputy Commissioner assigned. If the case is not ready for hearing, please contact Chief Deputy Commissioner Taylor or Sandra Cortes, Deputy Trial Administrator,

and the case will be removed from our list without the need for further motions.

2. **Where?** The **Hearing Calendar** denotes the date, time and place where the hearing will take place and the Deputy Commissioner before whom the case will be heard. The Deputy Commissioners are divided into teams who cover the East, Middle, and Western parts of the state, and a special team that hears specially set cases statewide. Deputy Commissioners are also routinely placed on special assignments, such as hearing prisoner tort claims, uninsured employer cases and contempt proceedings. The regular teams rotate every six months into a different geographic region. **Chief Deputy Commissioner Taylor** also holds hearings. The schedule of hearing trips for each Deputy Commissioner, including his or her hearing calendars, can be found on our website at <http://www.ic.nc.gov>.

Please take note of the date, time and *place* set for your hearing. Due to lack of available courtroom space, occasionally the Deputy Commissioners have to use different courtrooms, etc., even during the same hearing week. Also, generally speaking, cases from various counties are assigned to a Deputy Commissioner to hear, and those cases may be grouped together in one or more counties for hearing purposes. For example, even if your case originated in Granville County, it may be grouped together with other cases for hearing in Vance County. If a hearing site presents a problem for your client, please notify the Deputy Commissioner immediately.

3. **How?** Most hearing calendars are faxed to the parties from the Commission. *Pro se* claimants (those not represented by an attorney) receive copies of the calendar via certified mail, return receipt requested. Once receiving the hearing calendar, please complete the **Fax Acknowledgment Form (see Appendix, Attachment F)** and fax it back to the person sending it. This form is our indication that notice of the hearing has been received. Pay close attention to the parties noted for your case on the calendar, because whoever is listed on the calendar as a party will receive notice of the hearing. If you have a contention that a different insurance company is on the risk, or if more than one insurance company may be liable, be sure to file a motion to add that company if it does not appear on the calendar.
4. **What?** Please read carefully through the **Hearing Calendar and the Pre-Trial Order and Notice to Parties**, as important guidelines and deadlines are contained therein. The subpoena form to be used to compel the presence of witnesses is also contained in this packet. The Deputy Commissioner Section has adopted a Uniform Pre-Trial Order and Notice to Parties that contain imperative information with respect to

filing deadlines and other specific instructions for the submission of evidence. Make every effort to comply with the deadlines set forth, for example, a **Pre-Trial Agreement** will be required in most cases (See below and **Appendix, Attachment G**), and the Pre-Trial Order will set forth the date by which it should be submitted to the Commission. If for some reason one cannot comply with the deadline, please contact the Deputy Commissioner and/or his or her assistant and ask for an extension, otherwise, you may be subject to sanctions, which may include removal of the case from the hearing docket.

C. Requesting Continuances/Removals/Dismissals

1. Generally speaking, requests for continuances and removals should be kept to a minimum. The Deputy Commissioner section is working towards diminishing the number of continuances that are granted, as this can create a backlog of cases to hear and is taxing in terms of staff and monetary resources. DO NOT automatically expect a continuance, or even a removal, even if the parties and the attorneys both agree. The way to best address this issue is not to file a Form 33 unless the case is substantially ready to go forward to a hearing.
2. Please refer to Industrial Commission **Rule 609** which governs the filing of motions. Keep in mind that we usually allow ten (10) days for a response from the opposing party, if time permits. Otherwise, a motion, in the discretion of the Deputy Commissioner, may be ruled upon immediately, depending on the nature of the request. An order should be filed on your motion within seven (7) days of the time permitted for a response from the opposing party. Please remember to always include a proposed order with your motion, and state the opposing party's position in your motion.
3. **Requesting a Continuance** – File a motion for continuance with the Deputy Commissioner before whom the case is set, and file it as soon as it is realized that a conflict exists. *Do not expect a continuance, save compelling circumstances, and the Deputy Commissioner, in his or her discretion, will determine the definition of “compelling.”* Copy the opposing attorney or party with a copy of the motion, and state the opposing party's position with respect to the continuance. A certificate of service must accompany the motion. Motions for continuance may be filed with the Deputy Commissioner by U.S. Mail, fax, email, or hand-delivered. Always include a proposed Order with your motion. If a continuance is requested during the first five (5) months of a Deputy Commissioner's tenure in that part of the State, that Deputy Commissioner will most likely retain jurisdiction of that file and re-set the case on one of his or her future hearing dockets in the same area. If the continuance is requested in the sixth month

of that Deputy Commissioner's tenure in that part of the State, it is most likely that the case will be set for hearing before the next Deputy Commissioner who is scheduled to be in that area.

- a. **Example:** *An attorney has been granted secured leave by the Industrial Commission and the hearing date falls within the time frame the attorney has been granted leave. The attorney files a motion for continuance with the Deputy Commissioner, who grants the continuance. That case will still be in the hearing cycle, and the case will be continued to the next available docket in that area.*
 - b. **Note:** In order to utilize "secured leave" as a basis for a continuance, the attorney has to have already had their "leave secured." Attorneys may request periods of secured leave by submitting a letter to Chair Pamela Young, who approves leave requests. Additionally, attorneys may submit secured leave orders from the General Courts of Justice as a basis for a continuance.
4. **Requesting a Removal – What's the Difference?**

A **Continuance** of a case keeps that case in the hearing cycle – the case will be *continued* to be set at a later date, and possibly in a different geographical area. A **Removal** takes the case out of the hearing cycle – the case is *removed* from the hearing docket that it is currently on, and it is NOT placed on a future hearing docket unless the parties make that request in the future. The same procedure should be utilized for filing a motion for removal, as is used in the motion for continuance.

- c. **Example:** *The case was previously ready to be heard; however, since the filing of the Form 33, the claimant is now scheduled for back surgery, with an estimated recovery period of two (2) months. The parties wish to remove the case from the hearing docket, pending the claimant's recovery. It is more prudent to file a Motion for Removal in this instance because if a continuance were filed, the case may likely show up on a hearing docket in the next month, and the claimant would still be in recovery, thereby prompting the need to file another Motion for Continuance = wasted resources and energy! Therefore, a Motion for Removal best serves the parties, attorneys and the Commission, and the parties can request that the matter be placed back on the hearing docket once the claimant has recovered and is ready to proceed.*
- d. A Motion for Removal can also be used when the parties have settled the case prior to the call of the case for hearing.

5. **Requesting a Dismissal**

A **Dismissal** of a case comes in two forms – either with prejudice or without prejudice. The same procedure should be utilized for

filing a motion for dismissal as is used for motions for continuances and removals.

- e. A **Dismissal Without Prejudice** allows the moving party to file the same claim within one (1) year from the file date of the Order. **Example:** *Discovery has been served on a claimant and no responses have been received by defendants, despite a Deputy Commissioner's Order to Compel having been filed. Defendants might file a "Motion for Dismissal" based on the failure of the claimant to prosecute his claim and due to the claimant's failure to comply with the Order to Compel. The Deputy Commissioner can enter an Order of Dismissal Without Prejudice, which would only "temporarily" dismiss the claim, providing the claimant an opportunity to comply with the Order to Compel, and giving the claimant one year from the file date of the Order to re-file his claim.*
- f. A **Dismissal With Prejudice** dismisses claimant's claim all together. There is no option to re-file that claim. **Example:** *A claimant had an attorney representing her; however, that attorney has been granted a Motion to Withdraw. The pro se claimant is sent notice of hearing and the certified mail receipt card has been returned, showing the claimant has received the notice of hearing. By the date of the hearing, defense counsel nor claimant's prior attorney nor the Industrial Commission has received any correspondence or response from claimant. On the date of the hearing, the claimant does not appear, even after a significant period of time has elapsed from the time the hearing was set. Defense counsel files a Motion to Dismiss With Prejudice for claimant's failure to prosecute her claim. If the motion is granted, the claimant's case is dismissed.*

IV. EFFECTIVELY USING DOCUMENTARY EVIDENCE – ORGANIZING EXHIBITS, MEDICAL RECORDS AND MEDICAL DEPOSITIONS [(Rule 610(3)); PROPER USE OF EMPLOYMENT RECORDS

- A. **The Pre Trial Agreement (see Appendix, Attachment G)** is the best method for organizing exhibits. The Pre-Trial Agreement should list the parties' stipulations, witnesses, a list of exhibits, and the issues for determination by the Court. (See the Forms sections of the General Rules of Practice for the Superior and District Courts for a guide to drafting Pre-Trial Agreements). It also provides an opportunity to discuss the case with opposing counsel, which could lead to settlement of some issues or even settlement of the case. If the opposing party is not represented by counsel, you can still prepare your portion of a Pre-Trial Agreement and submit it to the Deputy Commissioner. PLEASE TALK TO THE OPPOSING COUNSEL OR OPPOSING PARTY BEFORE THE HEARING to prepare these important matters and to reduce any "surprises" to present to the

Deputy Commissioner regarding issues that have not been clarified or witnesses that have not previously been identified.

B. Organizing Exhibits – ALL exhibits that are documents should be PAGINATED. We utilize electronic document management systems at the Industrial Commission, so all of our documents are scanned into our computer system. If any documents are missing, this can be much more readily detected if the pages are numbered. This is especially the case for medical records.

1. Only use documents that are RELEVANT and MATERIAL to the issues. For example, an entire personnel file of the claimant may not be necessary, but certain pages from the file may be very relevant.
2. All exhibits that are being *stipulated* by the parties are marked with a "Stipulated" Exhibit sticker (usually white in color), which can be obtained from the court reporter at the time of hearing or pre-marked by the attorney. (One may want to wait until the time of hearing to mark exhibits, as some Deputy Commissioners may prefer the exhibits to be marked in a particular order). By stipulating to an exhibit, the attorneys are agreeing that the exhibit need not be authenticated through a witness and are automatically entered into evidence by the Deputy Commissioner. Common stipulated exhibits include the Pre-Trial Agreement, Industrial Commission forms and orders, and medical records.
3. Plaintiff's Exhibits are marked with Plaintiff's Exhibit stickers (usually yellow in color) and Defendants' Exhibits are marked with a Defendants' Exhibit sticker (usually blue in color), which can be obtained from the court reporter. If you pre-mark an exhibit, please avoid placing the sticker on top of any writing or emblems on the document. These exhibits generally need to be authenticated through a witness and offered for admission into evidence.

C. Organizing Medical Records – ALL medical records should be paginated and divided by medical care provider, including the name of the facility and the treating medical provider.

1. Due to the volume of medical records received in each case, it is imperative that those records be identifiable by the Industrial Commission file number and for those records to be paginated. Also, please divide the medical records by medical care provider, and it is helpful to identify those records by medical care facility and provider (the doctor or person rendering treatment). It is also helpful to have the medical records in chronological order.
2. It is often not necessary to provide every single solitary medical record available, but it is important to submit ALL relevant, material records that are pertinent to the issues in dispute. If prior medical treatment is an issue, then those records can be submitted as well.
3. Since all our documents are scanned into our computer system, even though spiral and other bound packaging is attractive and neat, it is most helpful for those records to be clipped together with giant binder clips or placed into a spiral notebook from which the pages can be easily

removed.

D. Organizing Medical Depositions – Rule 610 (3)

1. Industrial Commission Rule 610 (3) states in part:

The parties shall have 15 days following the hearing within which to schedule the taking of medical depositions unless otherwise extended by the Commission.

Additionally the Industrial Commission issued minutes (see **Appendix, Attachment H**) wherein it is explained that a \$100 fine will be assessed for failure to comply with **Rule 610(3)**. These minutes allow for a five (5) day grace period, in addition to the original 15 days, wherein the fine will be waived if the parties are (1) able to provide a reasonable explanation as to why the depositions have not been scheduled in accordance with Rule 610(3), or (2) if the parties provide the deposition dates.

2. The parties should begin the process for scheduling medical depositions as soon as the Form 33 Request for Hearing is filed or received, or as soon as practical thereafter. Sometimes it takes in inordinate amount of time to agree on a deposition date that fits the physician and the attorneys' schedules, so time (and money!) can be saved by trying to schedule these depositions as early as possible. If an attorney has difficulty getting a physician's cooperation with providing a deposition date, the attorneys can ask the Deputy Commissioner for assistance, which may include re-setting the case for hearing and issuing a subpoena for the physician to appear and give live testimony.
3. ***Generally speaking, for alleged injury by accidents, the parties are allowed sixty (60) days from the date of the hearing to complete medical depositions and/or lay testimony depositions.*** At the expiration of the initial sixty (60) day period, the parties are then generally allowed thirty (30) days within which to submit briefs and contentions and proposed Opinion and Awards. It is not unusual for the parties to experience delays in closing the evidentiary records, particularly in the scheduling of medical depositions. Therefore, the parties are strongly encouraged to obtain a schedule of depositions of all medical care providers to present at the time of the hearing. In the event that the parties still need additional time, the appropriate motion should be filed with the Deputy Commissioner before whom the case was heard, explaining in detail the need for an extension of time.
4. ***For alleged occupational disease claims, the parties are generally allowed ninety (90) days from the date of the hearing to complete medical and/or lay testimony depositions.*** At the expiration of the initial ninety (90) day period, the parties are then generally allowed thirty (30) days within which to submit briefs and contentions and proposed Opinion and Awards. In the event that the parties still need additional time, the appropriate motion should be filed with the Deputy Commissioner before whom the case was heard, explaining in detail the need for an extension of time. Submit Motions for Extension of Time prior to the expiration of the original time granted.

5. The Order from the Deputy Commissioner following the hearing will contain all the necessary and important deadlines, including the dates by which the parties are to be in compliance with Rule 610(3) and the dates for completing all depositions and submitting briefs and contentions and proposed Opinion and Awards.
6. Additionally, the IC website contains a [Deputy Commissioners Section Status of Cases](#) that is a spreadsheet listing of all Deputy Commissioners, the cases they have heard wherein the records remain open for additional evidence, and the timelines for the record to be closed. If you have questions concerning the information contained on the spreadsheet, please contact the Deputy Commissioner before whom the case was heard.

E. PROPER USE OF EMPLOYMENT RECORDS

1. The Plaintiff may request employment records through the discovery process (interrogatories and request for production of documents). It is recommended that Plaintiff's attorneys be aware of what may be contained in Plaintiff's personnel file. Certain documents may become relevant, depending on the issues in dispute for the hearing. For example, if a pre-existing injury is an issue, the application for employment, attendance records showing sick time taken and the reasons for the same, and/or notes from employer on-site medical visits would be important documents to review. *For example, if a Plaintiff claims to have begun missing work due to his or her workers' compensation injury, yet attendance records show that he or she had been missing work for an unrelated injury or condition, that contention may not carry much weight as far as proving that Plaintiff's current disability is work-related.*
2. Defendants often use documents from a Plaintiff-Employee's personnel file in order to include witness statements from accident investigations, any personnel issues regarding disciplinary actions, and any medical records or short term or long term disability benefits applications and awards. These documents can boost the theory of defense at hearings, but sometimes the use of those same documents (or the fact that no such documents exist) can backfire. *For example, if a Plaintiff was terminated for violating the attendance policy after trying to return to work following a workers' compensation injury, yet there are no attendance write-ups or disciplinary actions taken for such instances until after the injury occurred, that diminishes the strength of that particular defense (that the Plaintiff should not receive benefits after the termination because they would have still been working but for the attendance issues.)*

V. PRESENTING LAY WITNESS TESTIMONY: PREPARING WITNESSES FOR HEARING (Clue: WITNESS TESTIMONY IS NOT A DISCOVERY DEPOSITION)

A. Interview Your Client and Your Witnesses BEFORE the Scheduled Hearing.

As the Honorable Charles Becton (former Court of Appeals Judge and immediate past president of the North Carolina Bar Association) told us in our Trial Practice classes at the University of North Carolina School of Law, "You should know your closing argument once you've completed your client interview." Since we may not be as ingenious as Mr. Becton, it is imperative that you TALK with your client and ALL your witnesses and STUDY them prior to placing them on the stand. Chances are, the way they behave in your office or out in the hallway of the courthouse is how they will present themselves in court.

1. Discuss any inconsistencies in their recounting of events.
 2. Avoid the use of hearsay if possible.
 3. Determine which documents *support* your witness' testimony.
 4. Determine which documents *refute* your witness' testimony.
 5. Determine what other witnesses will corroborate your witness' testimony, and which ones will refute it and how.
 6. SEEK THE TRUTH, NO MATTER HOW IT MAY HURT YOUR CASE.
 7. Decide on a theory of recovery or a theory of defense and determine which witnesses BEST prove that theory.
 8. Discourage your witness from using foul language or overly dramatic gestures during their own testimony – or other witness testimony.
 9. Review the issues for determination that were listed on the Pre-Trial Agreement – which witness(es) will most effectively give information necessary for resolution of those issues and what documents or exhibits will be used in conjunction with that witness' testimony, if any?
- B. **Direct Examination** – Elicit important facts during direct examination, which probably will not include the individual's entire life story!
- a. Establish dates, time and places with specificity.
 - b. This is NOT a discovery deposition, so this is not the time to find out what happened in this case!
 - c. Be precise and succinct regarding the information this witness is to give.
 - d. You may form a strategy to reveal any unsavory information on direct, instead of waiting for the other attorney to reveal it on cross-examination. *Example: cover the subject of surveillance of your client.*
 - e. Ask open-ended questions as opposed to leading questions that pre-suppose the answer. *Example: A claimant has hurt his shoulder while lifting a box and you need to establish an interruption of his normal work routine: "Was there anything unusual about the box you lifted on July 3, 2007?" versus "The box you lifted on July 3, 2007 was heavier than usual wasn't it?" [The second question is LEADING.]*
 - f. Don't put words in your client's mouth. If he or she is not delivering the answer that you were anticipating, move on to the next question.

- C. **Cross Examination** – Address the important issues brought out on direct examination, but **DON'T REPEAT THE DIRECT EXAMINATION**.
- a. If credibility of the witness is at issue, this is the time to address it. One may use recorded statements, prior witness testimony, medical records, discovery responses, etc. in order to highlight inconsistencies in the witness' testimony.
 - b. Refrain from being “bull doggish” in your style of questioning; treat all witnesses with respect.
 - c. You may ask leading questions, but don't ask a question you don't know the answer to! The answer could be a major surprise that is hurtful to your case.
 - d. Use questions that address your theory of the issues in dispute – either for recovery or defense.
 - e. Clarify any of the witness' answers on direct that are unclear.
- D. **Determine if a Re-Direct or Re-Cross Examination is necessary and if so, keep it streamlined only to those items that need further clarification. DO NOT REPEAT what has already been testified to.**
- E. **Using Documents or Exhibits during witness testimony**
1. **When presenting your exhibits**, please identify the document on the record in terms of how you have previously marked it (i.e., “Plaintiff's Exhibit Number One”) or have the court reporter mark it for identification purposes. **Before presenting the exhibit to a witness**, ask the Deputy Commissioner if you may approach the witness, and recite on the record how the exhibit is marked. Have the witness identify the document.
 2. **If you refer to exhibits that have already been marked (stipulated exhibits, for example)**, identify the exhibit on the record according to how it is marked. For example, when you approach a witness with a document, say something along the lines of, “I'm showing you what has been previously marked as Stipulated Exhibit Number One, page 37.”
 3. **Special note for plaintiff's counsel with regards to medical records.** The Deputy Commissioner will read all the medical records that are admitted into evidence, so it is not necessary to review each medical visit one-by-one. Providing a background and summary of medical treatment, in chronological order, noting time periods, the treatment and the treating physician or other medical care provider is an effective way of presenting medical-related testimony. If it is necessary to refer to a specific medical record as part of a witness' testimony, please refer to how the record is marked for identification, including the page number where that record appears in the medical records exhibit.
 4. **Special note for defense counsel: Refrain from using the question:** “Do you know why Dr. Feel Better did not put that in his medical record?” You may certainly point out that something a claimant refers to is not in the medical record, but asking that person why it is not in there is not effective – the claimant did not write the record! Also, remember

that inconsistencies can also be addressed during the deposition of that particular treating physician or therapist.

F. Foreign Language Interpreters – IC Rule 616

1. **Rule 616 of the Industrial Commission** governs the use of foreign language interpreters. A person who does not speak or understand the English language is guaranteed assistance under this rule; however, notice is required to be given to the Industrial Commission and to the opposing party that the need for an interpreter exists. **Rule 616(3)** requires that such notice be given in writing, *not less than 21 days prior to the date of the hearing*, specifying the language to be interpreted. The employer or insurer is then required to retain the services of an interpreter who qualifies as an expert witness pursuant to N.C. Gen. Stat. §1C-1.
2. **Rule 616(5)** directs the employer or insurer to pay the interpreter's fees. The moving party may be assessed the costs of the interpreter only in cases where the claim for compensation was prosecuted without reasonable ground, or where it is ultimately determined that the request for an interpreter was unfounded.

VI. ATTORNEY ADVOCACY: RECOMMENDATIONS ON COURTROOM PRESENTATION (Clue: BE AN ADVOCATE, NOT AN ACTOR OR ACTRESS)

- A. If there is one single piece of advice I can offer practitioners, it is to **BE PREPARED!!! KNOW THE FACTS OF YOUR CASE!** Have all exhibits organized and all witnesses in place.
- B. **BE ON TIME!!!** Be on time means be *early*. A workers' compensation hearing is like any other trial, and requires the same type of preparation and respect for the Court. Know where the hearing is being held, and arrange to meet your client and witnesses at least one-half hour prior to the scheduled hearing. This ensures their presence and also allows time to take care of any preliminary matters before the testimony begins. You may notice on the hearing calendar that several cases may be set for the same time slot. Be prepared to go forward at the time indicated, as cases before yours may settle or otherwise come off the docket.
- C. **BE NICE!!! Courtroom demeanor and conduct** are just as important as the presentation of your case.
 1. Please don't argue with the Deputy Commissioner on evidentiary rulings – make a note for appeals purposes or ask to make an offer of proof.
 2. Do not belittle or badger opposing witnesses or opposing counsel. It is distracting to have to referee fights between attorneys or between attorneys and witnesses.
 3. Don't allow your client to badger opposing counsel.
 4. Don't badger your own witness.
 5. Counsel should address each other *through the Deputy Commissioner and not directly to one another*.
 6. Be courteous and respectful to the Deputy Commissioner and to opposing counsel.

7. Ask the Deputy Commissioner to approach the bench or to approach witnesses when necessary. Ask before you approach!
8. It is appropriate to stand while addressing the Deputy Commissioner.
9. Save the dramatics –There is no jury to perform for – the Deputy Commissioner is the judge and jury for workers' compensation cases! Even though one may have always dreamed of auditioning for "Law and Order," the workers' compensation hearing is not the time to do it. 😊

GOOD LUCK!

Attachment A

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 and Claim of Employee of His Personal Representative or Dependents (N.C. Gen. Stat. § 97-22 through 24) |
| Form 18B | Claim by Employee or His Personal Representative or Dependents for Workers' Compensation Benefits for Lung Damage, Including Asbestosis, Silicosis, and Byssinosis (N.C. Gen. Stat. § 97-53) |
| Form 18M | Employee's Claim for Additional Medical Compensation |
| Form 19 | Employer's Report of Employee's Injury to the Industrial Commission |
| Form 21 | 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 | Application to Terminate or Suspend Payment of Compensation Pursuant to N.C. Gen. Stat. § 97-18.1 |
| Form 25A | Certification of Complete Medical Reports (G.S. §97-82)—to be filed with Form 21 or Form 26 for approval of a permanent partial disability rating |
| Form 25C | Authorization for Rehabilitation Professional to Obtain Medical Records of Current Treatment |
| 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 25N | Notice to the Industrial Commission of Assignment of Rehabilitation Professional |
| Form 25R | 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 | Supplemental Agreement as to Payment of Compensation Pursuant to N.C. Gen. Stat. § 97-82 |
| Form 26A | Employer's Admission of Employee's Right to Permanent Partial Disability (revised 8/6/08) . |
| Form 26D | Agreement for Payment of Unpaid Compensation in Unrelated Death Cases |

Form 28	Return to Work Report
Form 28B	Report to Employer of Carrier /Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical Compensation
Form 28C	Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid Pursuant to a Compromise Settlement Agreement
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	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 © and (d)
Form 62	Notice of Reinstatement of Compensation of 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 90	Report of Earnings

***A Complete List of Forms can be found on the Industrial Commission website: www.ic.nc.gov**

REQUEST THAT CLAIM BE ASSIGNED FOR HEARING

IC File # _____

Emp. Code # _____

Carrier Code # _____

Carrier File# _____

Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employee's Name _____			Employer's Name _____ Telephone Number _____		
Address _____			Employer's Address _____ City _____ State _____ Zip _____		
City _____ State _____ Zip _____		Insurance Carrier _____			
() _____		Work Telephone _____		Carrier's Address _____ City _____ State _____ Zip _____	
Home Telephone _____		Date of Birth _____		Carrier's Telephone Number _____ Fax Number _____	
Social Security Number _____ Sex <input type="checkbox"/> M <input type="checkbox"/> F					

I, _____, respectfully notify you that the above named parties have failed to reach an agreement in regard to compensation, and I request a hearing.

We have been unable to agree because (state reason with specificity): _____

Employee believes he or she is entitled to the following workers' compensation benefits (check all that apply):

- Payment of compensation for days missed (give dates): _____
- Payment of medical expenses/treatment: _____
- Payment for permanent partial disability: _____
- Payment for permanent and total disability: _____
- Payment for scars: _____
- Other: _____

Has claimant participated in mediation? Yes No

Date of injury: _____ Part of body: _____

City and county wherein injury occurred: _____

Estimated length of hearing: _____

Below is a list of names and addresses of all witnesses, including doctors, whose testimony is to be taken by the requesting party. Doctors outside the county of hearing are not required to attend this hearing.

NAME	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

MAIL TO:

NCIC - DOCKET SECTION
4336 MAIL SERVICE CENTER
RALEIGH, NC 27699-4336
MAIN TELEPHONE: (919) 807-2500
OMBUDSMAN: (800) 688-8349

When a date of hearing is set, I respectfully request the Commission to send me signed subpoenas for my witnesses. When I receive these subpoenas, I will deliver them to the Sheriff of the county or counties in which each witness resides so that the subpoenas may be served.

(Signature of party requesting hearing, or attorney)

(Title)

(Address: street and number, city, state and zip)

(Date of notice)

CERTIFICATION

I, _____, hereby certify that this case is ready for hearing. This case will be set in the county where the injury occurred unless good reason is shown for a different location. If you want the hearing in a different county, name the county below and your reason for that location.

(County)

(Reason for setting)

(Signature)

Note: A copy of this form must be sent to opposing parties. The original of this form must be sent to the Industrial Commission at the address below:

MAIL TO:

**NCIC - DOCKET SECTION
4336 MAIL SERVICE CENTER
RALEIGH, NC 27699-4336
MAIN TELEPHONE: (919) 807-2500
OMBUDSMAN: (800) 688-8349**

RESPONSE TO REQUEST THAT CLAIM BE ASSIGNED FOR HEARING

IC File # _____

Emp. Code # _____

Carrier Code # _____

Carrier File # _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employer FEIN _____

Employee's Name _____

Employer's Name _____ Telephone Number _____

Address _____

Employer's Address _____ City _____ State _____ Zip _____

City _____ State _____ Zip _____

Insurance Carrier _____

() Home Telephone _____ () Work Telephone _____

Carrier's Address _____ City _____ State _____ Zip _____

Social Security Number _____ Sex M F Date of Birth _____ / _____ / _____

() Carrier's Telephone Number _____ () Fax Number _____

In response to the Request for Hearing filed we have been unable to agree to the benefits claimed because (state reason with specificity):

DEFENDANT AGREES TO THE FOLLOWING:

Compensability Denied

Subject to Act: _____
Employment relationship: _____
Insurance coverage: _____
Date of injury: _____
Injury by accident _____
Arising out of and in the course of employment: _____
Occupational disease _____
Average weekly wage \$ _____
Other: _____

Compensability Admitted

Form 21 approved on: _____
Form 60 approved on: _____
Temp. total paid from: _____
to _____
Temp. partial paid from: _____
to _____
Perm. partial paid from: _____
to _____
for _____ % ppd of _____
Form 26 approved on: _____
Form 24 approved on: _____
Form 28B filed on: _____
Other: _____
Part of body: _____

City and county wherein injury occurred: _____
Estimated length of hearing: _____

MAIL TO:

NCIC – DOCKETS SECTION
4336 MAIL SERVICE CENTER
RALEIGH, NC 27699-4336
MAIN TELEPHONE: (919) 807-2500
OMBUDSMAN: (800) 688-8349

Below is a list of names and addresses of all witnesses, including doctors, whose testimony is to be taken by the undersigned. Doctors outside the county of hearing are not required to attend this hearing.

NAME	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

When a date of hearing is set, I respectfully request the Commission to send me signed subpoenas for my witnesses. When I receive these subpoenas, I will deliver them to the Sheriff of the county or counties in which each witness resides so that the subpoenas may be served.

(Signature)	Title
(Address: street and number, city, state and zip)	
(Date)	

Note: A copy of this form must be sent to opposing parties. The original of this form must be sent to the Industrial Commission at the address below:

MAIL TO:

**NCIC – DOCKETS SECTION
4336 MAIL SERVICE CENTER
RALEIGH, NC 27699-4336
MAIN TELEPHONE: (919) 807-2500
OMBUDSMAN: (800) 688-8349**

THIS IS THE ONLY NOTICE YOU WILL RECEIVE

**NORTH CAROLINA INDUSTRIAL COMMISSION
AMENDED HEARING DOCKET**

**DEPUTY COMMISSIONER: CHRYSTAL REDDING STANBACK
COURT REPORTER: GRAHAM ERLACHER**

**THURSDAY, SEPTEMBER 24, 2009
THE DOBBS BUILDING
430 N. SALIBURY, STREET
2ND FLOOR ROOM 2115
RALEIGH, NORTH CAROLINA**

I. C. FILE NUMBER

890553 9:30am **	Phillip Norton (<i>Expedited Hearing</i>) v. Dean Collins Construction Inc. Westfield Insurance Company	PLF: White & Stradley Raleigh, NC DFT: Young Moore & Henderson Raleigh, NC
671551 9:30am **	Joy B. Cannada (<i>Admin. Appeal</i>) v. Wal-Mart Stores Inc. Claims Management	PLF: Charles Darsie Durham, NC DFT: Young Moore & Henderson Raleigh, NC
062694 10:30am **	Hind Noukhaly (<i>Form 24 Appeal</i>) (<i>See Rule 616</i>) v. Knowledge Learning Corp. Specialty Risk Services	PLF: Oxner Thomas & Permar Raleigh, NC DFT: Cranfill Sumner & Hartzog Raleigh, NC
681557 10:30am **	Miriam Corado v. Townsend Inc. Liberty Mutual Insurance Co.	PLF: Hyland & Padilla Durham, NC DFT: Davis & Hamrick Winston-Salem, NC
920459 11:30am **	Furman J. Gilliam (<i>Deceased Employee</i>) v. Eagle Water Systems Accident Fund Insurance Company	PLF: DFT: McAngus Goudelock & Courie Raleigh, NC
W10867 11:30am **	Florine Harris v. GKN Driveline North America Crawford & Company	PLF: Perry Perry & Perry Durham, NC DFT: Ogletree & Deakins Greensboro, NC
197729 12:30pm **	Vittorio Dimeglio (<i>See Rule 616</i>) v. Compass Group USA Inc. New Hampshire Insurance Co.	PLF: Hardison & Associates Raleigh, NC DFT: Young Moore & Henderson Raleigh, NC

**PLEASE REFER TO "SECTION VI-EXPERT WITNESSES" OF THE "NOTICE TO ALL PARTIES"
INSTRUCTIONS REGARDING THE TESTIMONY OF EXPERT WITNESSES.**

**NOTICE TO ATTORNEYS: A COPY OF THIS CALENDAR IS NOT BEING SENT TO REPRESENTED PARTIES.
IT IS YOUR RESPONSIBILITY TO NOTIFY YOUR CLIENT.**

****PRE-TRIAL ORDER REQUIRED.**

***** THE NOTICES ABOVE APPLY TO ALL CASES SCHEDULED THROUGHOUT THE DESIGNATED WEEK**

THIS IS THE ONLY NOTICE YOU WILL RECEIVE

**NORTH CAROLINA INDUSTRIAL COMMISSION
AMENDED HEARING DOCKET**

**DEPUTY COMMISSIONER: CHRYSTAL REDDING STANBACK
COURT REPORTER: GRAHAM ERLACHER**

**FRIDAY, SEPTEMBER 25, 2009
THE DOBBS BUILDING
430 N. SALIBURY, STREET
2ND FLOOR ROOM 2115
RALEIGH, NORTH CAROLINA**

I. C. FILE NUMBER

W04978/ 673731 9:30am **	Keith Kennedy v. Minuteman Powerboss CNA	PLF: Scudder & Hedrick Raleigh, NC DFT: Cranfill Sumner & Hartzog Raleigh, NC DFT: Teague Campbell Dennis & Gorham Raleigh, NC
316903 9:30am **	Paul Williams (<i>Med. Motion</i>) v. Johnson & Johnson Broadspire	PLF: Oxner Thomas & Permar Raleigh, NC DFT: Orbock Ruark & Dillard Winston-Salem, NC
789939 10:30am **	Gwendolyn C. Brantley King v. Maria Parham Hospital Allied Claims Administration	PLF: DFT: Robinson & Lawing Winston-Salem, NC
W00968 10:30am **	Terry L. Barnette v. Courtland Construction Co. Auto-Owners Insurance Co.	PLF: The Whitley Law Firm Raleigh, NC DFT: McAngus Goudelock & Courie Charlotte, NC
519440 11:30am **	Bulo L. Carver v. Patriot Building Company Inc. Amerisure Mutual Insurance Company	PLF: Heidi G. Chapman Chapel Hill, NC DFT: Stiles Byrum & Horne Charlotte, NC
W02754 11:30am **	Tyrone S. Alston v. Allegis/Aerotek A1 South Insurance/Broadspire	PLF: DFT: Wilson & Ratledge Raleigh, NC
401529 12:30pm **	Kim Anne Novak v. Granville County EMS Sedgwick CMS	PLF: DFT: Teague Campbell Dennis & Gorham Raleigh, NC

**PLEASE REFER TO "SECTION VI-EXPERT WITNESSES" OF THE "NOTICE TO ALL PARTIES"
INSTRUCTIONS REGARDING THE TESTIMONY OF EXPERT WITNESSES.**

**NOTICE TO ATTORNEYS: A COPY OF THIS CALENDAR IS NOT BEING SENT TO REPRESENTED PARTIES.
IT IS YOUR RESPONSIBILITY TO NOTIFY YOUR CLIENT.**

****PRE-TRIAL ORDER REQUIRED.**

***** THE NOTICES ABOVE APPLY TO ALL CASES SCHEDULED THROUGHOUT THE DESIGNATED WEEK**

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 cases in which all claimants or all defendants appear pro se or contempt proceedings. This Order does not apply to cases being filed under the State Tort Claims Act:

ORDER by CRYSTAL REDDING STANBACK, DEPUTY COMMISSIONER

FILED:

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 assigned to a case by 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 in the Industrial Commission.
 2. If counsel are unable to agree on any matter, counsel shall execute a Pre-Trial Agreement on all agreed matters. 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. 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 injury, and the period plaintiff was out.)

- 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.
2. Issues: Both parties will list all specific issues for trial. Issues not listed will not be tried absent the consent of all parties and the Deputy Commissioner assigned;
3. Industrial Commission Forms: The parties shall identify all Industrial Commission Forms that have been filed and the date of their 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.
4. Lay Witnesses: All lay witnesses to testify at trial shall be listed.
5. Expert Witness and IME Testimony: The parties are encouraged to identify all expert witnesses, including IME's, to be deposed post-hearing in the Pre-Trial Agreement. The parties shall set deposition dates within the time frames established in Section 3 below, pursuant to Rule 610(3)
6. Discovery: The parties shall certify that all pre-trial discovery has been completed and all relevant documents have been exchanged.
7. Exhibits: The parties shall stipulate that all documents submitted as Exhibits, including relevant medical records and Industrial Commission Forms, are to be admitted into evidence. Exhibits may be submitted up to and including the start of trial.
 - 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.
8. 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 with the Deputy Commissioner within 15 days following the trial a list specifically identifying all expert witnesses and IME's to be deposed and the dates of their depositions.
 - a. Depositions transcripts shall be submitted no later than 30 days after the deposition is completed.
 - b. Any extensions of time to complete depositions should be addressed to the Deputy Commissioner assigned.

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 assigned.

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
4338 Mail Service Center, Raleigh, North Carolina 27699-4338

CHRYSTAL REDDING STANBACK, DEPUTY COMMISSIONER
Yolanda Newsome, Legal Assistant
(919) 807-2555

I. WHEN CASE WILL BE HEARD

Cases will be heard in the order stated. 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. Be prepared to state whether any special circumstances should be taken into account. Any necessary changes in the order or scheduling of cases may then be made.

II. UNREPRESENTED PARTIES

Persons not represented by an attorney are advised to read the attached notice for more specific information concerning preparation for hearing. As workers' compensation cases involve medical and legal issues, 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 Law Referral Service at (919) 677-8574.

III. PRE-TRIAL STIPULATIONS

A Pre-Trial Agreement shall be required in all cases except those involving unrepresented plaintiffs. Stipulated medical evidence and other documentary evidence shall be paginated. The parties shall be prepared to submit an I.C. Form 22 Wage Chart, W-2 Form, or other evidence necessary to establish the plaintiff's average weekly wage.

IV. MOTIONS

Please review the docket as soon as you receive it. All Motions to Continue, Dismiss, or Remove, including those due to settlement, shall be directed to the Deputy Commissioner before whom the case is set and shall be made in written form, in compliance with the provisions of the Pre-Trial Order. The moving party shall prepare an order for the Deputy Commissioner with the appropriate case caption. Motions for continuance will be granted only for compelling reasons and only if the case cannot be rescheduled on the docket. Parties submitting motions by facsimile shall call to confirm receipt of the motion by the Deputy Commissioner. For further direction, refer to Rule 609 of the North Carolina Workers' Compensation Rules of the Industrial Commission.

V. SETTLEMENTS

The parties shall inform the Deputy Commissioner in a timely manner of any settlement. It is the responsibility of counsel to notify the Deputy Commissioner of settlement of the case prior to the scheduled hearing. Sanctions may be imposed against the parties for the failure to do so. The settlement agreement shall be submitted

to the Deputy Commissioner within 30 days of the date of hearing. When the parties resolve issues under circumstances where a settlement agreement would not be required, the parties shall submit a written memorandum stating the nature of the agreement.

VI. EXPERT WITNESSES

A. The parties shall obtain relevant medical or other experts' reports and, where possible, stipulate them into evidence.

B. Except in unusual circumstances, and with prior approval of the Deputy Commissioner, no testimony will be taken at the hearing from expert witnesses, including physicians. This testimony may be taken by deposition. The Deputy Commissioner shall be notified within 15 days following the hearing of the names of expert witness (es) a party would like to depose (See Rule 610). If permission is granted to take an expert's testimony at the hearing, the subpoena for the witness should specify that the witness await telephone instructions regarding the exact time of his or her appearance. Physicians who do not practice in the county in which the hearing is set must be deposed. However, where the plaintiff is unrepresented by legal counsel, medical testimony will be allowed for local physicians. Otherwise, the matter will be reset for hearing in the county in which the physician practices or the testimony shall be elicited by depositions upon written questions to the physician.

C. The parties shall make every effort to schedule post-hearing depositions upon receipt of the hearing docket, in order to assure prompt closing of the record. Deposition dates shall be stated in the Pre-Trial Agreement but may be supplemented at the hearing. The parties shall have 15 days following the hearing within which to schedule the taking of medical depositions unless otherwise extended by the Commission. In accordance with the Chair's directives, the parties shall be expected to complete the record within 60 days of the date of hearing, except in the case of complex occupational disease claims, in which case they shall be allowed 90 days. All deposition transcripts, exhibits, contentions and proposed Opinion and Awards must be submitted within that time.

D. The parties may depose an expert witness by agreement prior to the hearing without prior approval of the Deputy Commissioner. Depositions taken before the hearing shall be noted in the Pre-Trial Agreement submitted by the parties.

E. Procedure for Prompt Payment to Medical Expert Witnesses:

1. Counsel shall include the name of the physician deposed, practice name and fax number in all requests for approval of expert witness fees and in all proposed orders assessing fees submitted with such requests.

2. Counsel shall obtain the fax number of each physician at the beginning of each deposition at the time of eliciting the physician's name, education, area of specialty, etc.

3. Counsel shall include in the cover letter accompanying all requests for approval of expert witness fees the area of practice and board certifications of the physician deposed and indicate the length of the deposition.

4. When the Commission is contacted regarding failure of a party to timely make payment pursuant to an Order directing payment of an expert witness fee, a new Order directing payment and assessing a 10 percent late fee to the physician will be issued.

VII. MEDIATED SETTLEMENT CONFERENCES

Pursuant to Rule 3 of the Rules for Mediated Settlement Conferences, an order for Mediated Settlement Conference shall not delay the scheduling of a claim on the hearing docket, unless the parties have advised the Commission of their intention that the mediation be completed before a hearing is set. Parties are expected to request an extension of time to mediate a case before the original time limit has expired. Consequently, there should be no cases set on the hearing docket which have not been mediated. Sanctions may be imposed upon parties who have not requested an extension of time for mediation on a timely basis and who request that a case be removed from the hearing docket so that they can mediate the case.

North Carolina Industrial Commission

IC File # _____

Subpoena for Witness

Emp. Code # _____

Carrier Code # _____

The Use of This Form Is Required Under the Provisions of the Workers' Compensation Act

Employer FEIN _____

**Before the North Carolina Industrial Commission
430 North Salisbury Street
Raleigh, North Carolina 27611**

THE STATE OF NORTH CAROLINA

To the Sheriff of _____ County - Greetings:

You are hereby commanded to summon _____
to be and appear before the North Carolina Industrial Commission at the following location: _____ County,
_____ City, _____ Street Address, on
_____, at _____ o'clock to give evidence in a case then and there to be tried, wherein Plaintiff, _____

and _____ Defendant(s) are parties.

Physicians who are called to offer expert medical testimony are not required to appear at the above designated time; but instead, physicians are to stand-by from the time the case is scheduled and for the remainder of the business day. The physician will be telephoned at least 30 minutes before testifying.

FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT IN SANCTIONS AS PROVIDED BY LAW.

Issued this _____ day of _____.

This subpoena is served at the request of: _____

(List name of party and name of attorney, or if no attorney, so indicate)

Date Received by Sheriff: _____

Date Served by Sheriff: _____

Sheriff

SUBPOENA TO PRODUCE ITEMS OR DOCUMENTS

Pursuant to the required appearance, you are hereby commanded to bring with you the following items or documents:

(Describe with particularity)

Signature/Title

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. 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 web site (www.ic.nc.gov) or by calling 919-807-2529.
 2. Have the Form 36 (Subpoena for Witness) signed by the Clerk of Superior Court of the county where the action is pending.
 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.
- B. Bring to the hearing all written medical reports regarding your treatment, the cause of your condition, time out of work, and permanent disability.
- C. 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 workers' compensation cases involve medical and legal issues, 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 Law Referral Service at (919) 677-8574 or toll free at 800-662-7660.
- D. If you have any questions, please call the North Carolina Industrial Commission's Information Specialists at 1-800-688-8349.

NORTH CAROLINA INDUSTRIAL COMMISSION

DOBBS BUILDING
430 NORTH SALISBURY STREET
RALEIGH, NORTH CAROLINA 27611
(919) 807 - 2500

SERVICE ACKNOWLEDGEMENT
(Important Notice – Immediate Action Required)

The document attached is being served by facsimile transmission. The document is being transmitted by: Yolanda Newsome, Legal Assistant to Deputy Commissioner Chrystal Redding Stanback
The attached document is:

CIRCLE THE IC CASE NUMBER THAT YOUR FIRM REPRESENTS

**I. C. Number: 778966,768290,778101,774128,660531,832613,692345,717088,677417,761807,
767332,885013,772908,774972,702226,776785,777222,786085,794048,845286,875584,
691614,89449**

- HEARING CALENDAR** **August 27-29, 2008 CHARLOTTE, NC**
 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:

(919) 715-0280, 715-0281, 715-0282, & 715-0283

CIRCLE THE IC CASE NUMBER THAT YOUR FIRM REPRESENTS

Date received: _____

Law Firm Name: _____

If Solo Practitioner, Name of Attorney: _____

Signature of Person Receiving Facsimile Transmission: _____

CIRCLE THE IC CASE NUMBER THAT YOUR FIRM REPRESENTS

02/21/2008 THU 10:58 FAX

002/005

STATE OF NORTH CAROLINA
BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION
I.C. FILE NUMBER: 768975

ANNETTE CAINE,)
Employee,)
Plaintiff;)

vs.)

PLYMOUTH PRINTING CO. INC.,)
Defendant-Employer,)

THE HARTFORD,)
Defendant-Carrier.)

PRETRIAL AGREEMENT

A pre-trial conference was held in the above referenced cause on the 21st day of February, 2008. The Plaintiff was represented by Joel W. Davis, and the firm of The Deutorman Law Group, PA; the Defendants Plymouth Printing Co. Inc. and The Hartford were represented by Brotherion Ford Yeoman & Berry, PLLC, Demetrius Worley Berry, appearing.

1. It is stipulated that all parties are properly before the Industrial Commission, and that the Industrial Commission has jurisdiction over the parties and the subject matter.
2. It is stipulated that all parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.
3. In addition to the other stipulations contained herein, the parties stipulate and agree with respect to the following:
 - a. This case is subject to the North Carolina Worker's Compensation Act;
 - b. An employment relationship existed between the employee and the defendant-employer Plymouth Printing Co. Inc. and The Hartford was the insurer on the risk on the date of injury of 2/2/2007;
 - c. The employee's AWW will be determined by a form 22 to be submitted at the time of hearing;
 - d. Copies of the medical records and reports of the Plaintiff's various health care providers, may be introduced into evidence without further proof of authenticity;
 - e. Copies of the Discovery, and responses thereto, may be introduced into evidence without further proof of authenticity;

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- f. Copies of the documents filed with the Industrial Commission pertaining to this matter may be introduced into evidence without further proof of authenticity;
- g. Copies of the job analysis and job video may be introduced into evidence without further proof of authenticity;
- h. The deposition testimony of any medical witness may be taken within sixty (60) days of the date of the hearing and the parties may take the depositions of the following:

**Dr. Vincent Paul
 Guilford Orthopaedic & Sports Medicine Center
 1915 Lendew St.
 Greensboro, NC 27408**

Defendants' Independent Medical Record Reviewer

- 4. The following is a list of all known exhibits the Plaintiff may offer at the hearing:
 - a. All of the Plaintiff's relevant medical records;
 - b. All of the Plaintiff's relevant employment records;
 - c. The Industrial Commission forms;
 - d. The Answers to Discovery; and
 - e. All exhibits listed by the defendants.

- 5. The following is a list of all known exhibits the Defendants may offer at the hearing:
 - a. All of plaintiff's medical records;
 - b. All of plaintiff's employment records;
 - c. The Industrial Commission forms;
 - d. Parties' answers to discovery and documents produced in conjunction thereto;
 - e. Labor Market Survey;
 - f. Job Analysis and Video;
 - g. Any exhibits listed by plaintiff

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- h. Any and all documents used for impeachment purposes admissible pursuant to NC Rules of evidence.
6. The following is a list of all known witnesses the Plaintiff may call at the hearing:
- Annette Caine**
3035 NC Hwy 135
Stoneville, NC 27048
7. The following is a list of all known witnesses the Defendant's may call at the hearing:
- a. **Annette Caine**
3035 NC Hwy 135
Stoneville, North Carolina 27408
- b. **Ron Witmer**
Plymouth Printing, Inc.
3360 Old Lexington Road
Winston-Salem, NC 27107
- c. **Wanda Morgan**
Plymouth Printing, Inc.
3360 Old Lexington Road
Winston-Salem, NC 27107
- Any Witness identified by plaintiff**
8. The parties certify that there are no pending motions in this matter.
9. The parties certify that neither party desires further amendments to the pleadings.
10. The parties contend that the contested issues to be tried by the Industrial Commission are as follows:
- a. Did Plaintiff suffer an occupational disease that is compensable under the language of N.C.G.S. 97-53 on 2/2/2007 while she was employed by Plymouth Printing Co. Inc.?
- b. Did Plaintiff's job with the Defendant-Employer expose her to an increased risk for the development of an occupational disease than that which generally faces the public at large?
- c. If so, was Plaintiff disabled as the result of the alleged occupational disease of 2/2/2007?

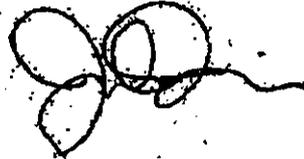
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d. If so, to what benefits, if any, is the plaintiff entitled for the compensable occupational disease of 2/2/2007?

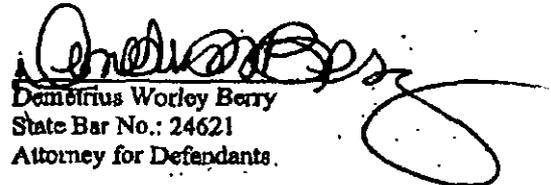
11. The probable length of the hearing is two (2) hours.

This the 21st day of February, 2008.



Joel W. Davis
State Bar No.: 29567
Attorney for Plaintiff

OF COUNSEL:
The Deuterian Law Group, P.A.
101 South Elm Street
Suite 170
Greensboro, NC 27401
(866) 373-1130



Demetrius Worley Berry
State Bar No.: 24621
Attorney for Defendants.

OF COUNSEL:
Brotherton Ford Yeoman & Berry, PLLC
P.O. Box 21327
Greensboro, NC 27420
(336) 346-1116

260243



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FAX TRANSMISSION

DATE: February 21, 2008

TO: Deputy Commissioner Chrystal Redding Stanback

Joel Davis

FAX: 919-715-0282

336-373-1466

FROM: Demetrius Worley Berry

RE: Annette Caine v. Plymouth Printing Co; IC File No. 768975

PAGES: 5 (INCLUDING COVER)

Deputy Commissioner Stanback:

Attached please find an executed Pretrial Agreement with respect to the above-referenced workers' compensation case currently scheduled for hearing on Wednesday, March 12, 2008, in Winston-Salem. Should you have any questions or concerns, please do not hesitate to contact me. Thank you.

CONFIDENTIAL AND PRIVILEGED

THIS COMMUNICATION, INCLUDING ALL DOCUMENTS, CONTAINS CONFIDENTIAL OR LEGALLY PRIVILEGED INFORMATION AND IS INTENDED FOR THE SOLE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MATERIAL BY ANYONE OTHER THAN THE INTENDED RECIPIENT IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. YOU WILL BE REIMBURSED FOR POSTAGE.

If there are any problems with this transmission, please contact Laura Key at (336) 346-1116 as soon as possible.

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**North Carolina
Industrial Commission
MINUTES**

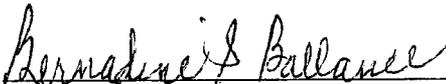
**ENFORCEMENT OF RULE 610(3) OF THE WORKERS' COMPENSATION
RULES OF THE NORTH CAROLINA INDUSTRIAL COMMISSION**

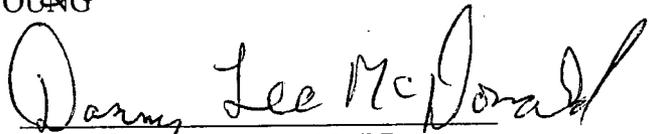
In an effort to expedite the filing of its decisions, and pursuant to its authority under Rule 802, the Industrial Commission shall enforce the provisions of Subparagraph (3) of Rule 610 with the assessment of sanctions.

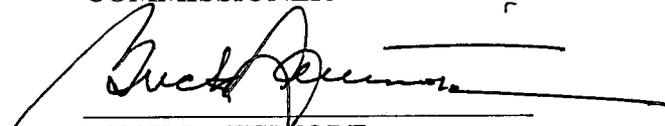
A party will be assessed a fine of \$100.00 for failure to comply with Rule 610(3). The Commission will waive this fine, if within five working days of this order, the party (1) provides a valid excuse for failure to schedule the expert witness depositions or (2) provides written proof of the dates the depositions have been scheduled. If the non-compliant party fails to provide a valid excuse or proof of the scheduling of depositions, that party will be required to personally appear before the Deputy Commissioner for an explanation of the nonfeasance, assessment of the fine and entry of any further order.

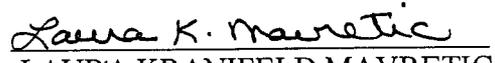
This the 17 day of December 2007.


PAMELA T. YOUNG
CHAIR


BERNADINE S. BALLANCE
COMMISSIONER


DANNY LEE MCDONALD
COMMISSIONER


BUCK LATTIMORE
COMMISSIONER


LAURA KRANIFELD MAVRETIC
COMMISSIONER


CHRISTOPHER SCOTT
COMMISSIONER


DIANNE C. SELLERS
COMMISSIONER