

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0109

DEADLINE FOR RECEIPT: Monday, February 8, 2021

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

I realize that an amendment to this Rule was approved by the RRC at its November 2020 meeting. Please do not show that approved language in italics, but instead use the version of the Rule that it currently in the Code (which will become effective March 1, 2021) to show the changes in this rulemaking.

In the Introductory Statement, please correct the citation to “.0109” Please do not show this as a change - simply do it.

In (b), line 9, what is “provide and maintain current” in this context? Is there a deadline to update changes to the contact information?

In (c), I am only asking – could you combine (c)(1) and (c)(2)? It seems that unrepresented individuals/entities, whether employees or employers, are using the exact same methods to update the contact information. If you need to keep it separate, that’s fine, but I did want to inquire.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 11 NCAC 23A .109 is amended as published in 35:09 NCR 922-923 as follows:

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3 Note: The text in italics was approved by the Rules Review Commission at its November 19, 2020 meeting.

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5 **11 NCAC 23A .0109 CONTACT INFORMATION**

6 (a) "Contact information" for purposes of this Rule shall include telephone number, facsimile number, email address,
7 and mailing address.

8 (b) All attorneys of record with matters before the Commission shall ~~inform the Commission in writing of any change~~
9 ~~in the attorney's contact information via email to doctors@ic.nc.gov.~~ provide and maintain current contact information
10 for the Commission's records via the Commission's Electronic Document Filing Portal ("EDFP").

11 (c) All unrepresented persons or entities with matters before the Commission shall inform the Commission upon any
12 change to their contact information in the following manner:

13 (1) All employees who are not represented by counsel shall inform the Commission of any change in
14 contact information by filing a written notice via EDFP, the Commission's Electronic Document
15 Filing Portal ("EDFP"), email to forms@ic.nc.gov, contactinfo@ic.nc.gov, facsimile, facsimile to
16 (919) 715-0282, U.S. Mail, U.S. mail sent to Office of the Clerk, 1236 Mail Service Center, Raleigh
17 North Carolina 27699-1236, private courier service, private courier service in accordance with Rule
18 .0101 of this Section, or hand delivery, hand delivery in accordance with Rule .0101 of this Section.

19 (2) All non-insured employers that are not represented by counsel shall inform the Commission of any
20 change in contact information by filing a written notice via EDPF, email to ~~doctors@ic.nc.gov~~,
21 contactinfo@ic.nc.gov , ~~facsimile~~, facsimile to (919) 715-0282, U.S. Mail, U.S. mail sent to Office
22 of the Clerk, 1236 Mail Service Center, Raleigh North Carolina 27699-1236, private courier service,
23 private courier service in accordance with Rule .0101 of this Section, or hand delivery, hand delivery
24 in accordance with Rule .0101 of this Section.

25 (d) All carriers, third party administrators, and self-insured employers shall provide the Commission, by sending an
26 email to contactinfo@ic.nc.gov, with an email address for service of claim-related documents in cases where the
27 Commission does not have email contact information for a specific representative assigned to the claim.

28 (e) Instructions on how to provide and update contact information via EDPF are available at
29 <https://www.ic.nc.gov/docfiling.html>.

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31 *History Note: Authority G.S. 97-80;*
32 *Eff. January 1, 2019;*
33 *Amended Eff. March 1, 2021.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0105

DEADLINE FOR RECEIPT: Monday, February 8, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

I realize that an amendment to this Rule was approved by the RRC at its November 2020 meeting. Please do not show that approved language in italics, but instead use the version of the Rule that it currently in the Code (which will become effective March 1, 2021) to show the changes in this rulemaking. This will include reflecting changes that were made to the Rule in the November amendments (for example, in (c), line 15, the current language is "30 days.")

In (d), line 20, what is "provide and maintain current" here? Is there a deadline to update changes to the contact information?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 11 NCAC 23B .0105 is amended as published in 35:09 NCR 923 as follows:

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3 Note: The text in italics was approved by the Rules Review Commission at its November 19, 2020 meeting.

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5 **11 NCAC 23B .0105 CONTACT INFORMATION**

6 (a) "Contact information" for purposes of this Rule shall include telephone number, facsimile number, email address,
7 and mailing address.

8 (b) All persons or entities without legal representation who have matters pending before the Commission shall advise
9 the Commission upon any change in contact information by filing a written notice via the Commission's Electronic
10 Document Filing Portal ("EDFP"), electronic ~~mail, [mail (doctors@ic.nc.gov),]~~ mail (contactinfo@ic.nc.gov).
11 ~~facsimile, facsimile to (919) 715-0282, U.S. Mail, U.S. mail sent to Office of the Clerk, 1236 Mail Service Center,~~
12 ~~Raleigh, North Carolina 27699-1236, private courier service, private courier service in accordance with Rule .0101 of~~
13 ~~this Section, or hand delivery. hand delivery in accordance with Rule .0101 of this Section.~~

14 (c) A plaintiff without legal representation who was an inmate in the North Carolina Division of Adult Corrections at
15 the time of filing his or her tort claim, shall, within thirty (30) days of release, provide the Commission with written
16 notice of his or her post-release contact information in any manner authorized in Paragraph (b) of this Rule. Following
17 the initial written notice of post-release contact information, the previously incarcerated plaintiff shall continue to
18 advise the Commission upon all changes in contact information in accordance with Paragraph (b) of this Rule.

19 (d) All attorneys of record with matters before the Commission shall ~~inform the Commission in writing of any change~~
20 ~~in the attorney's or the represented party's contact information~~ provide and maintain current contact information for
21 the Commission's records via email to docket@ic.nc.gov. EDPF.

22 (e) Instructions on how to provide and update contact information via EDPF are available at
23 <https://www.ic.nc.gov/docfiling.html>.

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25 *History Note: Authority G.S. 143-291; 143-300;*

26 *Eff. March 1, 2019;*

27 *Amended Eff. March 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23G .0104

DEADLINE FOR RECEIPT: Monday, February 8, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(4), line 21, please replace the period after "action" with a semicolon to be consistent with the rest of the Paragraph. Please make a conforming change to (a)(5), line 31.

In (b), Page 2, lines 27 and 34, why do you need "including the mediator" here? Is there a reason you could not simplify this to say, "... notice to the mediator and all parties and persons required to attend the conference."? I am only asking because these sentences say, "including the mediator" three times each.

On line 35, is this referring to "in-person" attendance? I am asking because I'm not sure how the public health and safety requirements would apply to remote attendance.

In (c), Page 3, line 1, what are "appropriate" cases here?

On line 8, what do you mean by "the requirements and provisions of"? Wouldn't saying "subject to Paragraph (b)" suffice?

On line 9, why do you need "properly"?

In (d), line 14, please insert a comma after "address"

In (g), lines 29-30, I think you can strike "that may be" before "convened in another pending case,"

On lines 30 and 36, consider replacing "in which" with "where"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 11 NCAC 23G .0104 is amended as published in 35:09 NCR 923-925 as follows:

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3 **11 NCAC 23G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS**

4 (a) Attendance. The following persons shall ~~physically~~ attend the mediated settlement conference:

- 5 (1) all individual parties;
- 6 (2) in a workers' compensation case, a representative of the employer at the time of injury if:
- 7 (A) the employer, instead of or in addition to the insurance company or administrator, has
- 8 decision-making authority with respect to settlement;
- 9 (B) the employer is offering the claimant employment and the suitability of that employment
- 10 is in issue;
- 11 (C) the employer and the claimant have agreed to simultaneously mediate non-compensation
- 12 issues arising from the injury; or
- 13 (D) the Commission orders the employer representative to attend the conference if the
- 14 representative's ~~physical~~ attendance is necessary to resolve matters in dispute in the subject
- 15 action;
- 16 (3) an officer, ~~employee~~ employee, or agent of any party that is not a natural person or a governmental
- 17 entity who is not ~~such the~~ party's outside counsel and who has the authority to decide on behalf of
- 18 ~~such the~~ party whether and on what terms to settle the action;
- 19 (4) in a workers' compensation case, an employee or agent of any party that is a governmental entity
- 20 who is not ~~such the~~ party's outside counsel or Attorney General's counsel responsible for the case
- 21 and who has the authority to decide on behalf of ~~such the~~ party and on what terms to settle the action.
- 22 (5) when the governing law prescribes that the terms of a proposed settlement may be approved only
- 23 by a Board, an employee or agent who is not ~~such the~~ party's outside counsel or Attorney General's
- 24 counsel responsible for the case and who has the authority to negotiate on behalf of and to make a
- 25 recommendation to the Board. ~~Because G.S. 143-295 provides the Attorney General with settlement~~
- 26 ~~authority on behalf of governmental entities and agencies for state tort claims, Pursuant to G.S. 143-~~
- 27 ~~295, an employee or agent of the named governmental entity or agency is not required to attend the~~
- 28 ~~mediated settlement conference; conference. The the~~ Attorney General shall attempt to make an
- 29 employee or agent of the named governmental entity or agency in a ~~state~~ State tort claim available
- 30 via telecommunication, and mediation shall not be delayed due to the absence or unavailability of
- 31 the employee or agent of the named governmental entity or agency.
- 32 (6) ~~The counsels of record; provided, that appearance~~ the counsels of record. Appearance by counsel
- 33 does not dispense with or waive the required attendance of the parties listed in Subparagraphs (1)
- 34 through (4);
- 35 (7) a representative of each defendant's primary workers' compensation or liability insurance carrier or
- 36 self-insured that may be obligated to pay all or part of any claim presented in the action. Each carrier
- 37 or self-insured shall be represented at the conference by an officer, ~~employee~~ employee, or agent

1 who is not ~~such~~ the party's outside counsel and who has the authority to decide on behalf of the
2 carrier or self-insured whether and on what terms to settle the action, or who has been authorized to
3 negotiate on behalf of ~~such~~ the carrier or self-insured and can communicate during the conference
4 with persons who have ~~such~~ the decision making authority; and

5 (8) by order of the Commission, other representatives of parties, ~~employers~~ employers, or carriers, who
6 may be obligated to pay all or part of any claim presented in the action and who are not required to
7 attend the conference pursuant to Subparagraphs (1) through (6) of this ~~Rule~~, Paragraph, if the
8 Commission determines that the representative's attendance is necessary for purposes of resolving
9 the matters in dispute in the subject action. Any employer or carrier who may be obligated to pay
10 all or part of any claim presented in the action and who is not required to ~~physically~~ attend the
11 mediated settlement conference pursuant to Subparagraphs (1) through (6) of this ~~Rule~~ Paragraph
12 or by Commission orders, may attend the conference if the employer or carrier elects to attend. If,
13 during the conference, the mediator determines that the ~~physical~~ attendance of one or more
14 additional persons is necessary to resolve the matters in dispute in the subject action, the mediator
15 may recess the conference and reconvene the conference at a later date and time to allow the
16 additional person or persons to ~~physically~~ attend.

17 (b) Any party or person required to attend a mediated settlement conference shall ~~physically~~ attend the conference
18 until an agreement is reduced to writing and signed as provided in Paragraph (e) of this Rule, or until an impasse has
19 been declared. ~~Any such party or person may have the physical attendance requirement excused or modified by~~
20 ~~agreement of all parties and persons required to attend the conference and the mediator, or by order of the Commission~~
21 ~~in the interests of justice upon motion of a party and notice to all parties and persons required to attend the conference.~~
22 "Attendance" shall mean in-person attendance whenever the mediation rules approved by the North Carolina Supreme
23 Court that are in effect at the time of the mediation for use in the Superior Court division require in-person attendance.
24 During any time that attendance means in-person attendance, any party or person, including the mediator, may have
25 the in-person attendance requirement excused or modified by agreement of all the parties and persons required to
26 attend the mediation conference, including the mediator, or by order of the Commission in the interests of justice upon
27 motion of a party and notice to all parties and persons required to attend the conference, including the mediator.
28 "Attendance" shall mean attendance using remote technology whenever the mediation rules approved by the North
29 Carolina Supreme Court that are in effect at the time of the mediation for use in the Superior Court division require
30 attendance through the use of remote technology. During any time that attendance means attendance through the use
31 of remote technology, any party or person required to attend the conference, including the mediator, may have the
32 remote technology attendance requirement excused or modified by agreement of all parties and persons required to
33 attend the conference, including the mediator, or by order of the Commission in the interests of justice upon motion
34 of a party and notice to all parties and persons required to attend the conference, including the mediator. All parties
35 and persons required to attend the conference, including the mediator, shall comply with all public health and safety
36 requirements set forth in the mediation rules approved by the North Carolina Supreme Court that are in effect at the
37 time of the mediation for use in the Superior Court division.

1 (c) In appropriate ~~cases~~ cases, the Commission or the mediator, with the consent of the parties, may allow a party or
2 insurance carrier representative who is required to ~~physically~~ attend a mediated settlement conference in person under
3 this Rule to attend the conference by telephone, conference call, speaker ~~telephone~~ telephone, or videoconferencing;
4 ~~provided that, the party or representative so attending the attending party or representative~~ shall bear all costs of ~~such~~
5 ~~the telephone calls or videoconferencing.~~ videoconferencing. In addition, the mediator may communicate directly with
6 the insurance representative with regard to matters discussed in mediation, and the mediator may set a subsequent
7 mediated settlement conference at which all parties and representatives shall ~~physically attend.~~ attend the mediated
8 settlement conference in person, subject to the requirements and provisions of Paragraph (b) of this Rule. The failure
9 to properly appear by telephone or videoconferencing in accordance with this Paragraph shall subject the responsible
10 party(ies) or representative(s) to sanctions pursuant to Rule .0105 of this Subchapter.

11 (d) Notice of Mediation Order. Within seven days after the receipt of an order for a mediated settlement conference,
12 the carrier or self-insured named in the order shall provide a copy of the order to the employer and all other carriers
13 who may be obligated to pay all or part of any claim presented in the workers' compensation case or any related third-
14 party tortfeasor claims, and shall provide the mediator and the other parties in the action with the name, address and
15 telephone number of all such carriers.

16 (e) Finalizing Agreement. If an agreement is reached in the mediated settlement conference, the parties shall reduce
17 the agreement to writing, specifying all terms of the agreement that bear on the resolution of the dispute before the
18 Commission, and shall sign the agreement along with their counsel. The parties may use IC Form MSC8, Mediated
19 Settlement Agreement, or MSC9, Mediated Settlement Agreement – Alternative Form, for this purpose. Execution by
20 counsel of a mediated settlement agreement for an employer or carrier who does not physically attend the mediated
21 settlement conference shall be deemed to be in compliance with this Rule and 11 NCAC 23A .0502. By stipulation of
22 the parties and at the parties' expense, the agreement may be electronically or stenographically recorded. All
23 agreements for payment of compensation shall be submitted for Commission approval in accordance with 11 NCAC
24 23A .0501 and .0502.

25 (f) Payment of Mediator's Fee. The mediator's fee shall be paid at the conclusion of the mediated settlement
26 conference, unless otherwise provided by Rule .0107 of this Subchapter, or by agreement with the mediator.

27 (g) Related Cases. Upon application by any party or person and upon notice to all parties, the Commission may, in
28 the interests of justice, order an attorney of record, ~~party~~ party, or representative of an insurance carrier who may be
29 liable for all or any part of a claim pending in a Commission case to attend a mediated settlement conference that may
30 be convened in another pending case, regardless of the forum in which the other case may be pending, provided that
31 all parties in the other pending case consent to the attendance ordered pursuant to this Paragraph. Any disputed issues
32 concerning such an order shall be addressed to the Commission's Dispute Resolution Coordinator. Unless otherwise
33 ordered, any attorney, ~~party~~ party, or carrier representative who attends a mediated settlement conference pursuant to
34 this Paragraph shall not be required to pay any of the mediation fees or costs related to that conference. Requests that
35 a party, attorney of record, or insurance carrier representative in a related case attend a mediated settlement conference
36 in a Commission case shall be addressed to the court or agency in which the related case is pending, provided that all
37 parties in the Commission case consent to the requested attendance.

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2 *History Note: Authority G.S. ~~97-80(a), (c); 97-80; 143-295; 143-296; 143-300; Rule 4 of Rules for Mediated~~*
3 *Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions;*
4 *Eff. January 16, 1996;*
5 *Amended Eff. October 1, 1998;*
6 *Recodified from 04 NCAC 10A .0616;*
7 *Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;*
8 *Recodified from 04 NCAC 10G .0104 Eff. June 1, 2018;*
9 *Emergency Amendment Eff. June 16, 2020;*
10 *Amended Eff. August 1, 2020;*
11 *Temporary Amendment Eff. August 28, 2020;*
12 *Amended Eff. March 1, 2021.*
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