

REQUEST FOR TECHNICAL CHANGE

AGENCY: Crime Victims Compensation Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: June 10, 2020

PLEASE NOTE: *This request may extend to 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:

In your filing forms, please update the agency's name in Box 1 to reflect the name of the Commission as established in G.S. 15B-3, the Crime Victims Compensation Commission.

In your filing forms, please update the Notice of Text publication date in Box 6 to January 15, 2020.

In your filing forms, Box 9, please check the "agency" box in response to "What prompted this action?" instead of the "other" box.

In the introductory statements for all rules, please fill in the space for the citation to the Register. Your introductory statements should read: "14B NCAC 09 .0301 is readopted as published in NCR 34:14 1300 as follows:"

Please skip a line between your introductory statement and the rule name in accordance with 26 NCAC 02C .0108.

In all Rules, why is the text underlined? Please do not underline text that matches language currently in the Code. As you are making changes in response to technical change requests, please review our rule format example at <https://files.nc.gov/ncoah/documents/Rules/Example-Permanent-Readoption-with-changes.pdf> and 26 NCAC 02C .0405 for formatting requirements.

Throughout these Rules, please capitalize "Commission" and "Director."

Why is S.L. 1987, c. 819 cited in your history notes?

In your history notes, please replace the period at the end of the line beginning with "Transferred from . . ." with a semicolon.

In your history notes, please delete "Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. April 1, 2020." You do not have to show this change, simply do it.

Ashley Snyder
Commission Counsel
Date submitted to agency: May 27, 2020

In your history notes, please add a proposed effective date. The earliest possible effective date for these rules is July 1, 2020. If that is your effective date, the last line in your history notes would read "Readopted Eff. July 1, 2020."

As an example, your history note for .0301 will read:

History Note: Authority G.S. 15B-3; 15B-6; S.L. 1987, c. 819, s. 35;

Temporary Rule Eff. November 24, 1987 For a Period of 171 Days to Expire on May 13, 1988;

Eff. April 1, 1988;

Transferred from 14A NCAC 11 .0501 Eff. June 1, ~~2013~~ 2013;

Readopted Eff. July 1, 2020.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: May 27, 2020

REQUEST FOR TECHNICAL CHANGE

AGENCY: Crime Victims Compensation Commission

RULE CITATION: 14B NCAC 09 .0301

DEADLINE FOR RECEIPT: June 10, 2020

PLEASE NOTE: *This request may extend to 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:

In (a), what are your office hours? What office hours "are or may be observed by other state offices in Raleigh?"

If you still use the term "state," please capitalize "State" if you are only referring to North Carolina.

In (b), line 7, please change "will" to "shall."

In (b), where is your statutory authority to "remain in continuous session subject to the call of the Chair?" What is the meaning of this sentence? Does this comply with G.S. 143-318.12?

In (c), please capitalize "Commission."

In (c), line 10, how may the forms be obtained from the Commission? Are they available on your website? If so, please provide a link.

In your history note, why is G.S. 15B-3 listed?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: May 27, 2020

1 14B NCAC 09 .0301 is readopted as published in xx:xx NCR:

2 **SECTION .0300 - CRIME VICTIMS COMPENSATION COMMISSION**

3 **14B NCAC 09 .0301 ADMINISTRATION**

4 (a) The offices of the Crime Victims Compensation Commission are located in the Archdale Building, 512 North
5 Salisbury Street, in Raleigh, North Carolina, 27611. The same office hours will be observed by the Crime Victims
6 Compensation Commission as are or may be observed by other state offices in Raleigh.

7 (b) The Commission will remain in continuous session subject to the call of the Chairman to meet as a body for the
8 purpose of transacting such business as may come before it.

9 (c) The use of any printed forms other than those approved and adopted by this commission is prohibited. Approved
10 forms may be obtained from the Commission.

11
12 *History Note: Authority G.S. 15B-3; 15B-6; S.L. 1987, c. 819, s. 35;*

13 *Temporary Rule Eff. November 24, 1987 For a Period of 171 Days to Expire on May 13, 1988;*

14 *Eff. April 1, 1988;*

15 *Transferred from 14A NCAC 11 .0501 Eff. June 1, 2013.*

16 *Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. April 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Crime Victims Compensation Commission

RULE CITATION: 14B NCAC 09 .0302

DEADLINE FOR RECEIPT: June 10, 2020

PLEASE NOTE: *This request may extend to 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:

Throughout this Rule, please capitalize "Commission."

At line 3, please change "will" to "shall."

In (a), line 3, what is the "approved form?" Are the contents or substantive requirements of the form in rule in accordance with 150B-2(8a)(d)?

In (a), under what circumstances does the Director determine an application is complete? What are you requiring for an application to be considered "complete?"

In (b), just to be sure, are applications still submitted via US mail?

In (c), what is the Director investigating? Under what circumstances do investigations occur?

At line 8, please define "cooperate."

At line 9, do you mean "may" or "shall?" If you mean "may," how is this determination made?

At line 10, do you mean "may" or "shall?" If you mean "may," under what circumstances is an investigation reopened? What factors are considered?

At line 11, please change "will" to "shall."

In (e), which awards are made by the Commission and which awards are made by the Director? Is this determined by G.S. 15B-10?

At line 12, please change "must" to "shall."

At line 12, please change "will" to "shall."

Ashley Snyder
Commission Counsel
Date submitted to agency: May 27, 2020

For the two sentences at lines 12-14, do these statements only concern the internal management of the agency? See 150B-2(8a)(a).

For the first sentence in (f), why is this sentence necessary? It repeats 15B-10(b).

Does the second sentence in (f) repeat the requirements of 15B-11(d)? If so, why is it necessary?

For the first two sentences of (g), do these statements only concern the internal management of the agency? See 150B-2(8a)(a).

At line 21, how does the Commission decide whether to approve an award? What factors are considered?

At line 22, how does the Commission determine the amount of an award? What factors are considered?

At line 22, do you mean “may” or “shall?” If you mean “may,” how is this determination made? What factors are considered?

In (i), please change “will” to “shall.”

In (i), how does the Director determine the order? Is this the same order as in (b)?

In (j), please change “must” to “shall.”

In (k), define “fails to cooperate.” Under what circumstances will an individual’s award be denied or reduced?

In (k), line 31, what information is requested by the Director? Are you referring to the information in the application?

In (k), line 32, do you mean “may” or “shall?” If you mean “may,” under what circumstances is an award denied or reduced? What factors are considered?

In (l), line 34, please consider deleting “be required to” since you already say “shall.”

At line 34, please capitalize “Director.”

At line 34, you say “at any time before or after the award?” Does this comply with 15B-18(c)?

At line 36, do you mean “may” or “shall?” If you mean “may” under what circumstances is this considered fraud? How is this determination made?

In (m), line 2, please change “must” to “shall.”

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

Ashley Snyder
Commission Counsel
Date submitted to agency: May 27, 2020

1 14B NCAC 09 .0302 is readopted as published in xx:xx NCR:

2 **14B NCAC 09 .0302 PROCESSING AND PAYMENT OF CLAIMS**

3 (a) An application for a claim will be accepted only when submitted on an approved form and a determination is
4 made by the Director that the application is complete.

5 (b) Claims will be processed in the order in which the completed applications are received, deliverable by United
6 States mail. In any consideration of competing claims, with respect to priority order of processing, the filed date
7 stamped on the claim shall be controlling.

8 (c) Every claim filed is subject to investigation by the Director. Failure of the claimant to cooperate in the
9 investigation may result in a denial of the claim or a reduction in the amount awarded.

10 (d) The Director or the commission may reopen the investigation of any claim.

11 (e) The Director will determine, from information supplied in the application and verified by investigation, the
12 amount of an award to be paid, if any, for each claim. Awards which must be made by the Commission will be
13 docketed by the Director for consideration by the Commission. The Director shall notify the Commission of all
14 awards made or denied.

15 (f) The Director shall make a recommendation for all awards that require approval by the Commission. After
16 reaching a decision to recommend that the Commission approve an award, the Director shall require the claimant to
17 submit current collateral source information. After receipt of such information, the Director shall notify the
18 claimant of the recommended award amount and the date on which the claim will be considered by the Commission.

19 (g) All awards requiring approval by the Commission shall be docketed upon the Commission's agenda by the
20 Director. The report of investigation and recommendation of the Director for each claim to be considered shall be
21 provided the Commission in advance of the meeting. The Commission shall decide whether to approve an award. If
22 the award is approved, the Commission shall determine an amount. Any award made by the Commission may be
23 reduced, prior to payment, by the Director to the extent the award is or will be recouped from a collateral source.

24 (h) The Director shall mail a written statement of the award decision to the claimant along with the check for the
25 award, if any, within 15 days of the Director's or the Commission's decision or verification of current collateral
26 source information, whichever occurs last. This written statement shall notify the claimant: whether this check is a
27 partial or complete payment of the award; of any payments made directly to a service provider; and of appeal rights.

28 (i) Claims will be docketed for determination of payment in an order determined by the Director.

29 (j) All payments of compensation must be made in strict accordance with the award issued by the Director or the
30 Commission.

31 (k) A claimant who fails to cooperate with or supply requested information to the Director or who supplies
32 inaccurate or incomplete information may have the claim denied or the award reduced, in the discretion of the
33 Director or the Commission.

34 (l) The claimant shall be required to inform the director at any time before or after the award of any action brought
35 to recover damages for the criminally injurious conduct that is the basis of any claim or award and the availability of
36 any collateral source. The failure to provide such information may be considered as fraud, allowing the Director or
37 the Commission to reduce or deny an award or to recover monies previously paid.

1 (m) All notifications and payments or other documents transmitted by mailing will be sent to the address submitted
2 by the claimant. The claimant must notify the Director in writing of any change of address.

3
4 *History Note: Authority G.S. 15B-6; 15B-7; 15B-8; 15B-10; 15B-11; S.L. 1987, c. 819, s. 35;*
5 *Temporary Rule Eff. November 24, 1987 For a Period of 171 Days to Expire on May 13, 1988;*
6 *Eff. April 1, 1988;*
7 *Transferred from 14A NCAC 11 .0502 Eff. June 1, 2013.*
8 *Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. April 1, 2020.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Crime Victims Compensation Commission

RULE CITATION: 14B NCAC 09 .0303

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection for lack of statutory authority, clarity, and necessity. The agency has not provided authority for Paragraph (b), which allows the Director to "poll the members of the Commission regarding any matter requiring the Commission's attention." (emphasis added). G.S. 15B-3(e) states "a majority of the Commission constitutes a quorum to transact business." Further, North Carolina's Open Meetings Laws provide ". . . each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting." G.S. 143-318.10(a). Staff has not found statutory authority for the Commission to make decisions regarding "any matter" without a quorum present at an open meeting.

Paragraph (b) allows the Director to poll Commission members "at such times as it is not practicable for the members to meet as a body." The Rule does not clarify under what circumstances it is considered "not practicable" for the Commission to meet. Paragraph (b) is ambiguous as written.

Paragraphs (a) and (d) govern conduct of Commission members at meetings. These statements concern only the internal management of the agency and do not meet the definition of a "Rule." G.S. 150B-2(8a)(a). Therefore, Paragraphs (a) and (d) are unnecessary.

The first sentence of Paragraph (c) refers to public notice requirements established in statute for Commission meetings and is therefore unnecessary.

§ 15B-3. Crime Victims Compensation Commission.

(a) There is established the Crime Victims Compensation Commission of the Department of Public Safety, consisting of seven members as follows:

- (1) One member to be appointed by the Governor;
- (2) One member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121;
- (3) One member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121;
- (4) The Attorney General or the Attorney General's designee;
- (5) The Secretary of the Department of Public Safety or the Secretary's designee; and
- (6) Two members to be appointed by the Secretary of the Department of Public Safety.

...

(e) A majority of the Commission constitutes a quorum to transact business.

(f) Members shall receive compensation and reimbursement for expenses as provided in G.S. 138-5.

...

§ 143-318.9. Public policy.

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly. (1979, c. 655, s. 1.)

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, 143-318.14A, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

...

1 14B NCAC 09 .0303 is readopted as published in xx:xx NCR:

2 **14B NCAC 09 .0303 MEETINGS OF THE COMMISSION**

3 (a) The Chairman of the commission shall preside at all meetings. In the absence of the Chairman, the vice-
4 chairman shall preside.

5 (b) At the direction of the Chairman, the Director may poll the members of the Commission by telephone regarding
6 any matter requiring the Commission's attention at such times as it is not practicable for the members to meet as a
7 body.

8 (c) Public notice of a meeting of the Commission shall be provided as required by law. Any matter to be considered
9 by the Commission shall be docketed not less than 15 days prior to the date the Commission is scheduled to meet.

10 (d) Any member of the Commission may be represented by proxy at any meeting of the Commission, having first
11 notified the Chairman of such representation.

12
13 *History Note: Authority G.S. 15B-3; 15B-6; S.L. 1987, c. 819, s. 35;*

14 *Temporary Rule Eff. November 24, 1987 For a Period of 171 Days to Expire on May 13, 1988;*
15 *Eff. April 1, 1988;*

16 *Transferred from 14A NCAC 11 .0504 Eff. June 1, 2013.*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. April 1, 2020.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Crime Victims Compensation Commission

RULE CITATION: 14B NCAC 09 .0304

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - X Unnecessary
 - Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection for lack of statutory authority and necessity. Paragraphs (b) and (c) follow a process that allowed agencies to issue a "final decision" after a "recommended decision" from the Office of Administrative Hearings in contested cases. This process of appealing agency decisions was changed in 2012 by S.L. 2012-187. The Administrative Procedure Act no longer allows the Crime Victims Compensation Commission to review decisions from Administrative Law Judges. Staff therefore recommends objection for lack of statutory authority.

Staff also recommends objection for lack of necessity because G.S. 15B-10(d) and G.S. 150B, Article 3 provide the process for commencing a contested case.

§ 15B-10. Awarding claims.

...
(d) The Director shall send each claimant a written statement of a decision made under subsection (a) or (b) that gives the reasons for the decision. A claimant who is dissatisfied with a decision may commence a contested case under Article 3 of Chapter 150B of the General Statutes. (1983, c. 832, s. 1; 1987, c. 819, s. 16; 1991, c. 301, s. 1; 1999-269, s. 2; 2004-159, s. 1; 2009-354, s. 3.)

Ashley Snyder
Commission Counsel

1 14B NCAC 09 .0304 is readopted as published in xx:xx NCR:

2 **14B NCAC 09 .0304 CONTESTED CASES**

3 (a) A claimant who is not satisfied with a decision by the Director or the Commission may appeal that decision by
4 writing to the Office of Administrative Hearings. A copy of the appeal should be sent to the Commission.

5 (b) After the Director or the Commission receives the recommended decision from the Office of Administrative
6 Hearings, each party shall be mailed a notice providing at least 15 days to file exceptions to the recommended
7 decision and to present written arguments to the Director or to the Commission.

8 (c) A written statement of the final decision of the Director shall be mailed to each party within 15 days of the time
9 for receiving the written exceptions. A written statement of the final decision of the Commission shall be mailed by
10 the Director within 15 days of the Commission meeting during which the contested case is considered.

11
12 *History Note: Authority G.S. 15B-6; 15B-12; 150B, Article 3; S.L. 1987, c. 819, s. 35;*
13 *Temporary Rule Eff. November 24, 1987 For a Period of 171 Days to Expire on May 13, 1988;*
14 *ARRC Objection Eff. January 21, 1988;*
15 *Eff. April 1, 1988;*
16 *Transferred from 14A NCAC 11 .0505 Eff. June 1, 2013.*
17 *Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. April 1, 2020.*
18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Crime Victims Compensation Commission

RULE CITATION: 14B NCAC 09 .0305

DEADLINE FOR RECEIPT: June 10, 2020

PLEASE NOTE: *This request may extend to 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:

At line 3, please capitalize "Commission."

At line 4, where is your statutory authority to limit or waive an individual's appeal rights?

At line 5, you use the term "may." Under what circumstances does acceptance of a partial payment not constitute a waiver?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: May 27, 2020

1 14B NCAC 09 .0305 is readopted as published in xx:xx NCR:

2 **14B NCAC 09 .0305 AWARDS**

3 Acceptance of the amount awarded by the Director or commission, evidenced by endorsing or presenting the check
4 for payment, shall be deemed a waiver of any further right to appeal or contest the amount or type of award.
5 Provided, however, the Director or the Commission may award a partial payment to the claimant, the acceptance or
6 presentment of which shall not be deemed to constitute a waiver of any further rights.

7
8 *History Note: Authority G.S. 15B-6; 15B-10; S.L. 1987, c. 819, s. 35;*
9 *Temporary Rule Eff. November 24, 1987 For a Period of 171 Days to Expire on May 13, 1988;*
10 *Eff. April 1, 1988;*
11 *Transferred from 14A NCAC 11 .0506 Eff. June 1, 2013.*
12 *Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. April 1, 2020.*
13