

1 Rule 11 NCAC 23A .0102 is amended **with changes** as published in 33:04 NCR 339 as follows:

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3 **11 NCAC 23A .0102 OFFICIAL FORMS**

4 (a) Copies of the Commission's rules and forms may be obtained **by by:**

5 **(1)** contacting the Commission in person at the address in Rule .0101 of this ~~Subchapter, Section,~~ by
6 written request mailed to North Carolina Industrial Commission, 4340-1236 Mail Service Center,
7 Raleigh, NC ~~27699-4340, 27699-1236,~~ Attn.: Administrator, Office of the Clerk, or

8 **(2)** **accessing or downloading the rules or forms** from the Commission's website at
9 <http://www.ic.nc.gov/abtrules.html> and <http://www.ic.nc.gov/forms.html>.

10 (b) Insurance carriers, self-insured employers, ~~attorneys~~ attorneys, and other parties may reproduce current
11 Commission forms for their own use, provided:

12 (1) no statement, question, or information blank contained on the Commission form is omitted from the
13 substituted form; and

14 (2) the substituted form is identical in size and format ~~with~~ to the Commission form.

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16 *History Note: Authority G.S. 97-80(a); 97-81(a);*
17 *Eff. January 1, 1990;*
18 *Amended Eff. November 1, 2014; June 1, 2000;*
19 *Recodified from 04 NCAC 10A .0102 Eff. June 1, ~~2018.~~ 2018;*
20 *Amended Eff. December 1, 2018.*

1 Rule 11 NCAC 23A .0503 is amended **with changes** as published in 33:04 NCR 342 as follows:

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3 **11 NCAC 23A .0503 NOTICE OF LAST PAYMENT FILING REQUIREMENT**

4 The ~~forms~~ form(s) required to be provided by G.S. 97-18(h) include the following: ~~are~~

- 5 (1) Form 28B Report of Employer or Carrier/Administrator of Compensation and Medical
6 Compensation Paid and Notice of Right to Additional Medical ~~Compensation.~~ **Compensation;**
7 ~~Compensation that requires a statement as to the last date of compensation,~~ and
8 (2) Form 28C Report of Employer or Carrier/Administrator of Compensation and Medical
9 Compensation Paid Pursuant to a Compromise Settlement ~~Agreement~~ Agreement. ~~that requires a~~
10 ~~statement as to the final payment of compensation.~~

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12 *History Note: Authority G.S. 97-18(h); 97-80(a);*
13 *Eff. January 1, 1990;*
14 *Amended Eff. November 1, 2014;*
15 *Recodified from 04 NCAC 10A .0503 Eff. June 1, ~~2018.~~ 2018.*
16 *Amended Eff. December 1, 2018.*

1 Rule 11 NCAC 23A .0608 is amended **with changes** as published in 33:04 NCR 342-43 as follows:

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3 **11 NCAC 23A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM**

4 (a) Upon the request of the employer or ~~his or her~~ the employer's agent to take a written or a recorded statement, the
5 employer or ~~his~~ the employer's agent shall advise the employee that the statement may be used to determine whether
6 the claim will be paid or denied. Any ~~plaintiff~~ employee who gives his or her employer, ~~it's~~ the employer's carrier, or
7 any agent of the employer either a written or recorded statement of the facts and circumstances surrounding his or her
8 injury shall be furnished a copy of the statement within 45 days after a request by the employee. Further, any ~~plaintiff~~
9 employee who ~~shall give~~ gives a written or recorded statement of the facts and circumstances surrounding his or her
10 injury shall, without request, be furnished a copy ~~no less than~~ of the statement within 45 days ~~from~~ after the filing of
11 a Form 33 Request that Claim be Assigned for Hearing. The copy shall be furnished at the expense of the person,
12 ~~firm~~ firm, or corporation at whose direction the statement was taken.

13 (b) If any person, ~~firm~~ firm, or corporation ~~unreasonably~~ fails to comply with this Rule, then **an order may be entered**
14 **by** a Commissioner or Deputy Commissioner **may, if it is in the interest of justice, enter an order** prohibiting that
15 person, ~~firm~~ firm, or corporation, or its representative, from introducing the statement into evidence or using any part
16 of the statement.

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18 *History Note: Authority G.S. 97-80(a);*
19 *Eff. January 1, 1990;*
20 *Amended Eff. November 1, 2014; June 1, 2000;*
21 *Recodified from 04 NCAC 10A .0608 Eff. June 1, ~~2018-2018~~;*
22 *Amended Eff. December 1, 2018.*

1 Rule 11 NCAC 23A .0609A is amended **with changes** as published in 33:04 NCR 343-44 as follows:

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3 **11 NCAC 23A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS**

4 (a) Medical motions brought pursuant to G.S. 97-25 and responses thereto shall be brought before either the Office
5 of the Chief Deputy Commissioner or the Executive Secretary and shall be submitted ~~electronically to~~
6 ~~medicalmotions@ic.nc.gov, in accordance with Rule .0108 of this Subchapter. For parties to whom the electronic~~
7 ~~filing requirements of Rule .0108(b) of this Subchapter apply. Motions motions, responses, and notices of appeal and~~
8 ~~responses shall be submitted under the EDFP category "Medical Motions and Responses." The submitting party shall~~
9 contemporaneously serve a copy of the filing to the Commission and the opposing party or opposing party's counsel,
10 if represented.

11 ~~(b) Following receipt of a notice of hearing before a Deputy Commissioner on a medical motion or appeal, the parties~~
12 ~~shall submit all subsequent filings and communications electronically directly to the Deputy Commissioner assigned.~~

13 ~~(c)~~ (b) In addition to any notice of representation contained in a medical motion or response, an attorney who is
14 retained by a party to prosecute or defend a medical motion or appeal before the Commission shall file a notice of
15 representation in accordance with Rule .0108 of ~~the~~ this Subchapter and send a copy of the notice to all other counsel
16 and all unrepresented parties involved in the proceeding.

17 ~~(d)~~ (c) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall
18 contain the following:

- 19 (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25 and a statement directly
20 underneath the case caption clearly indicating the request is for either an administrative ruling by
21 the Executive Secretary or an expedited full evidentiary hearing before a Deputy Commissioner;
- 22 ~~(2) the employee's name. If the employee is unrepresented, the employee's telephone number and, if~~
23 ~~available, the employee's email address and fax number. If the employee is represented, the name,~~
24 ~~email address, telephone number, and fax number of employee's counsel;~~
- 25 ~~(3) the employer's name and employer code;~~
- 26 ~~(4) the carrier or third party administrator's name, carrier code, telephone number, fax number, and, to~~
27 ~~the extent available, email address;~~
- 28 ~~(5) the adjuster's name, email address, telephone number, and fax number if counsel for the employer~~
29 ~~and carrier has not been retained;~~
- 30 ~~(6) if an attorney has been retained for the employer or carrier, the attorney's name, email address,~~
31 ~~telephone number, and fax number;~~
- 32 ~~(7)~~(2) a statement of the treatment or relief requested;
- 33 ~~(8)~~(3) a statement of the medical diagnosis of the employee and the name of any health care provider
34 having made a diagnosis or treatment recommendation that is the basis for the motion;
- 35 ~~(9)~~(4) a statement as to whether the claim has been admitted on a Form 60, Employer's Admission of
36 Employee's Right to Compensation, Form 63, Notice to Employee of Payment of Compensation
37 without Prejudice (G.S. 97-18(d)) or Payment of Medical Benefits Only without Prejudice (G.S. 97-

1 2(19) & 97-25), Form 21, Agreement for Compensation for Disability, or is subject to a prior
2 Commission Opinion and Award or Order finding compensability, with supporting documentation
3 attached;

4 ~~(10)~~(5) a statement of the time-sensitive nature of the request, if any;

5 ~~(11)~~(6) an explanation of opinions known and in the possession of the movant by any relevant experts,
6 independent medical examiners, and second opinion examiners;

7 ~~(12)~~(7) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify
8 whether the employee has made a prior written request to the defendants for the examination, as
9 well as the date of the request and the date of the denial, if any;

10 ~~(13)~~(8) a representation that informal means of resolving the issue have been attempted in good faith, and
11 a statement of the opposing party's position, if known; and position or that there has been a
12 reasonable attempt to contact the opposing party and ascertain its position; and

13 ~~(14)~~(9) a proposed Order in Microsoft Word ~~format.~~format, in accordance with Rule .0609 of this Section.

14 ~~(e)~~ (d) Motions submitted pursuant to G.S. 97-25 and requesting emergency medical relief shall contain the following:

15 (1) a boldface or otherwise emphasized designation as "Emergency Medical Motion";

16 (2) ~~the employee's name. If~~ if the employee is unrepresented, the employee's telephone number and, if
17 available, the employee's email address and fax ~~number. If the employee is represented, the name,~~
18 ~~email address, telephone number, and fax number of the employee's counsel; number;~~

19 (3) ~~the employer's name and employer code, if known;~~

20 (4) ~~the carrier or third party administrator's name, carrier code, telephone number, fax number, and, if~~
21 ~~available, email address;~~

22 ~~(5)~~(3) the adjuster's name, email address, telephone number, and fax number if counsel for the
23 employer/carrier has not been retained;

24 (6) ~~the counsel for employer/carrier's name, email address, telephone number, and fax number;~~

25 ~~(7)~~(4) an explanation of the medical diagnosis and treatment recommendation of the health care provider
26 that requires emergency attention;

27 ~~(8)~~(5) a statement of the need for a shortened time period for review, including relevant dates and the
28 potential for adverse consequences if the recommended relief is not provided emergently;

29 ~~(9)~~(6) an explanation of opinions known and in the possession of the movant by any relevant experts,
30 independent medical examiner, and second opinion examiners;

31 ~~(10)~~(7) a representation that informal means of resolving the issue have been attempted in good faith, and
32 a statement of the opposing party's position, if known; position or that there has been a reasonable
33 attempt to contact the opposing party and ascertain its position;

34 ~~(11)~~(8) documents known and in the possession of the movant relevant to the request, including relevant
35 medical records; and

36 ~~(12)~~(9) a proposed Order in Microsoft Word ~~format.~~format, in accordance with Rule .0609 of this Section.

1 ~~(f)~~ (e) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission
2 of any time allowed for response and whether informal telephonic oral argument is necessary. The Commission shall
3 consider the interests of justice or judicial economy when determining the time allowed for response and whether
4 informal telephonic oral argument is necessary.

5 ~~(g)~~ (f) A party may appeal an Order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or
6 receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of this Subchapter by filing notice of
7 appeal ~~electronically to medicalmotions@ic.nc.gov~~ in accordance with Rule .0108 of this Subchapter within 15
8 calendar days of receipt of the Order. Notices of appeal shall be submitted via EDFP under the category “Medical
9 Motions and Responses.” A letter or motion expressing an intent to appeal a decision of the Executive Secretary shall
10 be considered a request for an expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter or motion shall
11 specifically identify the Order from which the appeal is taken and shall indicate that the appeal is from an
12 administrative Order by the Executive Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of
13 appeal, the appeal shall be assigned to a Deputy Commissioner and an Order under the name of the Deputy
14 Commissioner to which the appeal is assigned shall be issued within five days of receipt of the notice of appeal.

15 ~~(h)~~ (g) Depositions, if requested by the parties or ordered by the Deputy Commissioner, shall be taken in accordance
16 with Rule .0612 of this Section and on the Deputy Commissioner's order pursuant to G.S. 97-25. In full evidentiary
17 hearings conducted by a Deputy Commissioner pursuant to G.S. 97-25(f)(1) and (f)(2), depositions shall be completed
18 and all transcripts, briefs, and proposed Opinion and Awards filed with the Deputy Commissioner in accordance with
19 Rule .0108 of this Subchapter within 60 days of the filing of the motion or appeal. The Deputy Commissioner may
20 reduce or enlarge the timeframe contained in this Paragraph for good cause shown or upon agreement of the parties.

21 ~~(i)~~ (h) A party may appeal the decision of a Deputy Commissioner filed pursuant to G.S. 97-25(f)(2) by filing notice
22 of appeal to the Full Commission within 15 calendar days of receipt of the decision in accordance with Rule .0108 of
23 this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's decision filed pursuant to G.S. 97-
24 25 shall be considered notice of appeal to the Full Commission, provided that the letter specifically identifies the
25 decision from which appeal is taken and indicates that the appeal is taken from a decision by a Deputy Commissioner
26 pursuant to G.S. 97-25(f)(2). After receipt of notice of appeal, the appeal shall be acknowledged by the Commission
27 within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The
28 Order shall set the schedule for filing briefs. A Full Commission hearing on an appeal of a medical motion filed
29 pursuant to G.S. 97-25 shall be held telephonically and shall not be recorded unless unusual circumstances arise and
30 the Commission so orders. All correspondence, briefs, and motions related to the appeal shall be addressed to the
31 Chair of the Panel ~~with a copy to his or her law clerk.~~ and shall be filed in accordance with Rule .0108 of this
32 Subchapter.

33 ~~(j)~~ (i) A party may appeal the administrative decision of the Chief Deputy Commissioner or the Chief Deputy
34 Commissioner's designee filed pursuant to G.S. 97-25(f)(3) by filing notice of appeal electronically ~~to~~
35 ~~medicalmotions@ic.nc.gov~~ in accordance with Rule .0108 of this Subchapter within 15 calendar days of receipt of
36 the Order. A letter or motion expressing an intent to appeal the Chief Deputy Commissioner's or the Chief Deputy
37 Commissioner's designee's Order filed pursuant to G.S. 97-25(f)(3) shall be considered a notice of appeal, provided

1 that the letter specifically identifies the Order from which appeal is taken and indicates that the appeal is from an
2 Order of a Deputy Commissioner entered pursuant to G.S. 97-25(f)(3). After receipt of notice of appeal, the appeal
3 shall be acknowledged within five days by sending an Order under the name of the Deputy Commissioner to whom
4 the appeal is assigned. The appeal of the administrative decision of the Chief Deputy Commissioner or the Chief
5 Deputy Commissioner's designee shall be subject to G.S. 97-25(f)(2) and G.S. 97-84.

6 ~~(k) Claimants and employers without legal representation are not required to file documents via electronic~~
7 ~~transmission and may file documents with the Commission via EDP, electronic mail, facsimile, U.S. Mail, private~~
8 ~~courier service, or hand delivery.~~

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10 *History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77;*
11 *Eff. January 1, 2011;*
12 *Amended Eff. February 1, 2016; November 1, 2014;*
13 *Recodified from 04 NCAC 10A .0609A Eff. June 1, ~~2018~~-2018;*
14 *Amended Eff. December 1, 2018.*

1 Rule 11 NCAC 23A .0610 is amended **with changes** as published in 33:04 NCR 344-45 as follows:

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3 **11 NCAC 23A .0610 PRE-TRIAL AGREEMENT**

4 (a) A Pre-Trial Agreement shall be signed by the attorneys and filed with the Commission in accordance with Rule
5 .0108 of this Subchapter 10 days before the hearing, unless a shorter time period is ordered upon agreement of the
6 parties.

7 (b) The Pre-Trial Agreement shall be prepared in a form that conforms to the Order on Final Pre-Trial Conference
8 adopted in the North Carolina Rules of Practice for the Superior and District Courts. Should the parties fail to comply
9 with a Pre-Trial Order, the Commissioner or Deputy Commissioner shall remove the case from the hearing docket if
10 required in the interests of justice or to promote judicial economy. Should the parties ~~thereafter~~ comply with the Pre-
11 Trial Order after the removal of the case, the Pre-Trial Agreement shall be directed to the Commissioner or Deputy
12 Commissioner who removed the case from the docket and filed in accordance with Rule .0108 of this Subchapter.
13 The Commissioner or Deputy Commissioner shall order the case returned to the hearing docket as if a Request for
14 Hearing had been filed on the date of the Order to return the case to the hearing docket. No new Form 33 Request
15 that Claim be Assigned for Hearing is required.

16 (c) If the parties need a conference, a Commissioner or Deputy Commissioner shall order the parties to participate in
17 a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or
18 Deputy Commissioner deems ~~appropriate~~, **appropriate in the interests of justice or judicial economy**, including
19 conference telephone calls.

20 (d) Any party may request a pre-trial conference to aid in settling the case or resolving contested issues prior to trial.
21 Requests for such pre-trial conferences shall be directed to the Commissioner or Deputy Commissioner before whom
22 the claim has been calendared.

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24 *History Note: Authority G.S. 97-80(a); 97-80(b); 97-83;*
25 *Eff. January 1, 1990;*
26 *Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000; March 15,*
27 *1995;*
28 *Recodified from 04 NCAC 10A .0610 Eff. June 1, ~~2018-2018~~;*
29 *Amended Eff. December 1, 2018.*

1 Rule 11 NCAC 23A .0611 is amended **with changes** as published in 33:04 NCR 345 as follows:

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3 **11 NCAC 23A .0611 HEARINGS BEFORE THE COMMISSION**

4 (a) The Commission may, on its own motion, order a hearing or rehearing of any case in dispute. The Commission
5 shall set a contested case for hearing in a location deemed convenient to witnesses and the Commission.

6 (b) In setting contested cases for hearing, cases in which the payment of workers' compensation benefits is at issue
7 take precedence.

8 (c) The Commission shall give notice of hearings in every case. Postponement or continuance of a duly scheduled
9 hearing shall be allowed only in the discretion of a Commissioner or Deputy Commissioner before whom the case is
10 set if required in the interests of justice or to promote judicial economy. ~~Where~~ When a party has not notified the
11 Commission of the attorney representing the party prior to the mailing of calendars for hearing, notice to that party
12 constitutes notice to the party's attorney.

13 (d) In a contested case, the record includes all prior Opinion and Awards, filed Commission forms, form agreements,
14 awards, and orders of the Commission. Any other documents that the parties wish to have included in the record shall
15 be introduced and received into evidence.

16 ~~(e) Hearing costs shall be assessed in each case set for hearing, including those cases that are settled after being
17 calendared and notices mailed, and shall be payable upon receipt of a statement from the Commission.~~

18 ~~(f)(e)~~ (e) In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or
19 delayed **and rescheduled** if the proceedings before the General Court of Justice in that county are cancelled or delayed.

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21 *History Note: Authority G.S. 97-79; 97-80(a); 97-84; 97-91;*
22 *Eff. January 1, 1990;*
23 *Amended Eff. November 1, 2014; June 1, 2000;*
24 *Recodified from 04 NCAC 10A .0611 Eff. June 1, 2018-2018;*
25 *Amended Eff. December 1, 2018.*