

1 Rule 11 NCAC 23A .0101 is amended as published in 33:04 NCR 339 as follows:

2
3 **CHAPTER 10 - INDUSTRIAL COMMISSION**

4
5 **SUBCHAPTER 10A - WORKERS' COMPENSATION RULES**

6
7 **SECTION .0100 - ADMINISTRATION**

8
9 **11 NCAC 23A .0101 LOCATION OF MAIN OFFICE AND HOURS OF BUSINESS**

10 The main office of the North Carolina Industrial Commission is located in the Dobbs Building, 430 North Salisbury
11 Street, Raleigh, North Carolina. Documents that ~~are not being filed electronically~~ may be filed via hand-delivery in
12 accordance with Rule .0108 of this Section may be filed at the main office between the hours of 8:00 a.m. and 5:00
13 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

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15 *History Note: Authority G.S. 97-80(a);*
16 *Eff. January 1, 1990;*
17 *Amended Eff. January 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000;*
18 *Recodified from 04 NCAC 10A .0101 Eff. June 1, 2018-2018;*
19 *Amended Eff. December 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0102

DEADLINE FOR RECEIPT: Wednesday, November 7, 2018

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 that the following technical changes be made:

In (a), please consider putting the information regarding how rules and forms can be found in a list form.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, October 24, 2018

1 Rule 11 NCAC 23A .0102 is amended 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 contacting the Commission in person at the
5 address in Rule .0101 of this ~~Subchapter~~, Section, by written request mailed to North Carolina Industrial Commission,
6 4340-1236 Mail Service Center, Raleigh, NC ~~27699-4340,~~ 27699-1236, Attn.: ~~Administrator,~~ Office of the Clerk, or
7 from the Commission's website at http://www.ic.nc.gov/abtrules.html and http://www.ic.nc.gov/forms.html.

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

- 10 (1) no statement, question, or information blank contained on the Commission form is omitted from the
11 substituted form; and
12 (2) the substituted form is identical in size and format ~~with~~ to the Commission form.

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

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0103

DEADLINE FOR RECEIPT: Wednesday, November 7, 2018

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 that the following technical changes be made:

On line 6, should "may" be "shall" in "may complete"?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, October 24, 2018

1 Rule 11 NCAC 23A .0103 is amended as published in 33:04 NCR 339 as follows:

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3 **11 NCAC 23A .0103 NOTICE OF ACCIDENT AND CLAIM OF INJURY OR OCCUPATIONAL**
4 **DISEASE**

5 To give notice of an accident or occupational disease and to make a ~~workers~~ workers' compensation claim, an
6 employee may complete a Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or
7 Dependent and file it in accordance with Rule .0108 of this Section. ~~electronically with Claims Administration, or by~~
8 ~~mail to North Carolina Industrial Commission, 4335 Mail Service Center, Raleigh, NC 26799-4335.~~

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10 *History Note: Authority G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81;*
11 *Eff. January 1, 1990;*
12 *Amended Eff. November 1, 2014;*
13 *Recodified from 04 NCAC 10A .0131 Eff. June 1, ~~2018.~~ 2018;*
14 *Amended Eff. December 1, 2018.*
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Rule 11 NCAC 23A .0108 is amended as published in 33:04 NCR 340-41 as follows:

11 NCAC 23A .0108 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

(a) All documents filed with the Commission in workers' compensation cases shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Any document filed with the Commission that requires contemporaneous payment of a processing fee pursuant to Rule 11 NCAC 23E .0203 shall not be deemed filed until the fee has been paid in full. The electronic filing requirements of this Rule shall not apply to ~~claimants, employees,~~ medical providers, or non-insured employers without legal representation. ~~Claimants, Employees,~~ medical providers, and non-insured employers without legal representation may file all documents with the Commission via the Commission's Electronic Document Filing Portal ("EDFP"), electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) Except as set forth in Paragraphs (d) and (e) of this Rule, all documents shall be transmitted to the Commission via EDPF. Information regarding how to register for and use EDPF is available at <http://www.ic.nc.gov/training.html>. In the event EDPF is inoperable, all documents required to be filed via EDPF shall be transmitted to the Commission via electronic mail to edfp@ic.nc.gov. Documents required to be filed via EDPF that are sent to the Commission via electronic mail when EDPF is operable shall not be accepted for filing.

(c) Transcripts of depositions shall be filed with the Commission pursuant to this Rule by the court reporting service. ~~The transcripts~~ Transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The parties shall provide the Commission's court reporting service with the information necessary to effectuate filing of the deposition transcripts and attached exhibits via EDPF. If an exhibit to a deposition is in a form that makes submission of an electronic copy impracticable, counsel for the party offering the exhibit shall make arrangements with the Commission to facilitate the submission of the exhibit. Condensed transcripts and paper copies of deposition transcripts shall not be accepted for filing.

(d) A Form 19 shall be filed as the first report of injury (FROI) via electronic data interchange (EDI), except in claims involving non-insured employers or in claims for lung disease, in which case the Form 19 shall be filed electronically to forms@ic.nc.gov, by mail to 1235 Mail Service Center, Raleigh, North Carolina 27699-1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule. ~~in accordance with Paragraph (e) of this Rule.~~ Information regarding how to register for and use EDI is available at www.ncicedi.info.

(e) The workers' compensation forms and documents listed in Table 1 shall not be required to be transmitted via EDPF provided all applicable qualifying conditions are met.

Table 1: Forms and documents exempt from EDPF filing requirements and how to file them:

DOCUMENT	QUALIFYING CONDITION(S)	HOW TO FILE
Form 18	No IC file number has been assigned	Electronically to forms@ic.nc.gov , by mail to 4335 <u>1235</u> Mail Service Center, Raleigh, North Carolina

		27699-4335, 27699-1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 18B	Always exempt from EDPF filing requirement	Electronically to forms@ic.nc.gov, by mail to 4335 1235 Mail Service Center, Raleigh, North Carolina 27699-4335, 27699-1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 19	1. The claim involves a non-insured employer; or 2. The claim is for lung disease.	Electronically to forms@ic.nc.gov, by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 51	Always exempt from EDPF filing requirement	Electronically to forms@ic.nc.gov
Plaintiff's Attorney Representation Letter	No IC file number has been assigned	Electronically to forms@ic.nc.gov
Medical motions, responses, and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter	Always exempt from EDPF filing requirement	Electronically to medicalmotions@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Compliance & Fraud Investigative Division	Always exempt from EDPF filing requirement	Electronically to fraudcomplaints@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Medical Fees Section	Always exempt from EDPF filing requirement	Electronically to medicalfees@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Safety Education & Training Section	Always exempt from EDPF filing requirement	Electronically to safety@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule

A Form 25N to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to 25N@ic.nc.gov
Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to rehab.referrals@ic.nc.gov

(f) A self-insured employer, carrier or guaranty association, third-party administrator, court reporting service, or law firm may apply to the Commission for an emergency temporary waiver of the electronic filing requirement set forth in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.

(g) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDPF or U.S. Mail.

*History Note: Authority G.S. 97-80; 97-81;
Eff. February 1, 2016;
Amended Eff. February 1, 2017;
Recodified from 04 NCAC 10A .0108 Eff. June 1, ~~2018~~; 2018;
Amended Eff. December 1, 2018.*

1 Rule 11 NCAC 23A .0302 is amended as published in 33:04 NCR 341 as follows:

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3 **11 NCAC 23A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS**

4 All insurance carriers, third party ~~administrators~~ administrators, and self-insured employers shall designate a primary
5 contact person for workers' compensation issues in North Carolina and shall maintain and provide annually on July 1
6 to the Director of Claims Administration of the ~~Commission~~, Commission via email at rule302@ic.nc.gov, the primary
7 contact person's current contact information, including direct telephone and facsimile numbers, mailing addresses, and
8 email addresses. Contact information shall be updated within 30 days of any change.

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10 *History Note: Authority G.S. 97-80(a); 97-94;*

11 *Eff. January 1, 2011;*

12 *Amended Eff. November 1, 2014;*

13 *Recodified from 04 NCAC 10A .0302 Eff. June 1, ~~2018~~. 2018;*

14 *Amended Eff. December 1, 2018.*

1 Rule 11 NCAC 23A .0411 is amended as published in 33:04 NCR 341-42 as follows:

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3 **11 NCAC 23A .0411 SAFETY RULES**

4 The process for the Commission to approve safety rules or regulations adopted by an employer as set forth in G.S. 97-
5 12 is as follows:

- 6 (1) The rules shall comply with the general provisions of the safety rules outlined by the American
7 National Standards Institute and the Occupational Safety and Health Act. These standards can be
8 purchased at <http://ansi.org/> and accessed free of charge at <https://www.osha.gov/law-regs.html>,
9 respectively.
- 10 (2) The rules shall be filed by the employer in writing with the Commission ~~Commission's Safety~~
11 ~~Education Director by mailing them to 4339 Mail Service Center, Raleigh, NC 27699 4339 or e-~~
12 ~~mailing them to safety@ic.nc.gov. in accordance with Rule .0108 of this Subchapter.~~
- 13 (3) The rules shall be reviewed by the ~~Safety Education Director of the~~ Commission or the
14 Commission's designee and approved if they are found to be in compliance with Item (1) of this
15 Rule. The Commission shall return to the employer a copy of the rules bearing a certificate of
16 approval from the Commission indicating that the rules have been approved by the Commission
17 pursuant to G.S. 97-12. An employer may revise and resubmit the rules if not approved by the
18 ~~Safety Education Director of the~~ Commission.

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20 *History Note: Authority G.S. 97-12; 97-80(a);*
21 *Eff. November 1, 2014;*
22 *Recodified from 04 NCAC 10A .0411 Eff. June 1, ~~2018~~ 2018;*
23 *Amended Eff. December 1, 2018.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0503

DEADLINE FOR RECEIPT: Wednesday, November 7, 2018

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 that the following technical changes be made:

With the use of (1) and (2) in this Rule, please consider formatting it as a list, and add "the following" at the end of "include" and end "... Additional Medical Compensation" with a semi-colon, rather than a comma.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, October 24, 2018

1 Rule 11 NCAC 23A .0503 is amended 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~~ are (1) Form 28B Report of Employer or
5 Carrier/Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical
6 Compensation, ~~Compensation that requires a statement as to the last date of compensation~~, and (2) Form 28C Report
7 of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid Pursuant to a Compromise
8 Settlement ~~Agreement~~ Agreement, ~~that requires a statement as to the final payment of compensation.~~

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10 *History Note: Authority G.S. 97-18(h); 97-80(a);*

11 *Eff. January 1, 1990;*

12 *Amended Eff. November 1, 2014;*

13 *Recodified from 04 NCAC 10A .0503 Eff. June 1, ~~2018~~. 2018;*

14 *Amended Eff. December 1, 2018.*
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1 Rule 11 NCAC 23A .0602 is amended as published in 33:04 NCR 342 as follows:

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3 **11 NCAC 23A .0602 REQUEST FOR HEARING**

4 (a) Contested claims shall be set on the hearing docket only upon the written request of one of the parties for a hearing
5 or rehearing of the case in dispute. Any request for hearing shall contain the following:

- 6 (1) the basis of the disagreement between the parties, including a statement of the issues raised by the
7 requesting party;
8 (2) the date of injury;
9 (3) the part of the body injured;
10 (4) the city and county where the injury occurred;
11 (5) the names and addresses of all doctors and other expert witnesses whose testimony is needed by the
12 requesting party;
13 (6) the names of all lay witnesses to be called to testify for the requesting party;
14 (7) an estimate of the time required for the hearing of the case; and
15 (8) the telephone number(s), email address(es), and mailing address(es) of the party(ies) requesting the
16 hearing and their legal counsel.

17 (b) A Form 33 Request that Claim be Assigned for Hearing, completed in full, shall constitute compliance with this
18 Rule. The request for a hearing shall be filed with the ~~Docket Section of the Commission~~. Office of the Clerk in
19 accordance with Rule .0108 of this Subchapter. A copy of the ~~Request for Hearing~~ Form 33 Request that Claim be
20 Assigned for Hearing shall be forwarded to the attorneys for all opposing parties, or to the opposing parties themselves,
21 if unrepresented.

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23 *History Note: Authority G.S. 97-80(a); 97-83;*
24 *Eff. January 1, 1990;*
25 *Amended Eff. November 1, 2014; June 1, 2000;*
26 *Recodified from 04 NCAC 10A .0602 Eff. June 1, ~~2018~~; 2018;*
27 *Amended Eff. December 1, 2018.*
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1 Rule 11 NCAC 23A .0603 is amended as published in 33:04 NCR 342 as follows:

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3 **11 NCAC 23A .0603 RESPONDING TO A PARTY'S REQUEST FOR HEARING**

4 (a) No later than 45 days from receipt of a request for hearing from a party, the opposing party or parties shall file
5 with the Commission a response to the request for hearing.

6 (b) The response shall contain the following:

- 7 (1) the basis of the disagreement between the parties, including a statement of the issues raised by the
8 moving party that are conceded and the issues raised by the moving party that are denied;
9 (2) the date of the injury, if it is contended to be different than that alleged by the moving party;
10 (3) the part of the body injured, if it is contended to be different than that alleged by the moving party;
11 (4) the city and county where the injury occurred, if they are contended to be different than that alleged
12 by the moving party;
13 (5) an estimate of the time required for the hearing of the case; and
14 (6) the telephone number(s), email address(es), and mailing address(es) of the party or parties
15 responding to the request for hearing and their legal counsel.

16 (c) A Form 33R Response to Request that Claim be Assigned for Hearing, completed in full and filed with the ~~Docket~~
17 ~~Section Office of the Clerk of the Commission~~, in accordance with Rule .0108 of this Subchapter, shall constitute
18 compliance with this Rule. A copy of the Form 33R Response to Request that Claim be Assigned for Hearing shall
19 be forwarded to the attorneys for all opposing parties or the opposing parties themselves, if unrepresented.

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21 *History Note: Authority G.S. 97-80(a); 97-83;*
22 *Eff. January 1, 1990;*
23 *Amended Eff. November 1, 2014; June 1, 2000;*
24 *Recodified from 04 NCAC 10A .0603 Eff. June 1, 2018-2018;*
25 *Amended Eff. December 1, 2018.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0608

DEADLINE FOR RECEIPT: Wednesday, November 7, 2018

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 that the following technical changes be made:

In (a), line 9, please consider changing "shall give" to "gives"

In (b), please delete or define "unreasonably"

In (b), how will it be determined whether an order will be entered prohibiting the introduction or use?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, October 24, 2018

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

2
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 a written or recorded statement of the facts and circumstances surrounding his or her injury
10 shall, without request, be furnished a copy ~~no less than of the statement within~~ 45 days ~~from~~ after the filing of a Form
11 33 Request that Claim be Assigned for Hearing. The copy shall be furnished at the expense of the person, ~~firm~~ firm,
12 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 prohibiting that person, ~~firm~~ firm, or corporation, or its representative,
15 from introducing the statement into evidence or using any part of the statement.

16
17 *History Note: Authority G.S. 97-80(a);*
18 *Eff. January 1, 1990;*
19 *Amended Eff. November 1, 2014; June 1, 2000;*
20 *Recodified from 04 NCAC 10A .0608 Eff. June 1, ~~2018~~-2018;*
21 *Amended Eff. December 1, 2018.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0609A

DEADLINE FOR RECEIPT: Wednesday, November 7, 2018

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 that the following technical changes be made:

In (c)(8) and (d)(7), please delete or define "reasonable."

In (e), how will the time for response be determined? Is this set forth elsewhere in rule or statute?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, October 24, 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(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.

3 ~~(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
4 receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of this Subchapter by filing notice of
5 appeal ~~electronically to medicalmotions@ic.nc.gov~~ in accordance with Rule .0108 of this Subchapter within 15
6 calendar days of receipt of the Order. Notices of appeal shall be submitted via EDPF under the category "Medical
7 Motions and Responses." A letter or motion expressing an intent to appeal a decision of the Executive Secretary shall
8 be considered a request for an expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter or motion shall
9 specifically identify the Order from which the appeal is taken and shall indicate that the appeal is from an
10 administrative Order by the Executive Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of
11 appeal, the appeal shall be assigned to a Deputy Commissioner and an Order under the name of the Deputy
12 Commissioner to which the appeal is assigned shall be issued within five days of receipt of the notice of appeal.

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

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

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

1 shall be acknowledged within five days by sending an Order under the name of the Deputy Commissioner to whom
2 the appeal is assigned. The appeal of the administrative decision of the Chief Deputy Commissioner or the Chief
3 Deputy Commissioner's designee shall be subject to G.S. 97-25(f)(2) and G.S 97-84.

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

7
8 *History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77;*
9 *Eff. January 1, 2011;*
10 *Amended Eff. February 1, 2016; November 1, 2014;*
11 *Recodified from 04 NCAC 10A .0609A Eff. June 1, ~~2018.~~ 2018.*
12 *Amended Eff. December 1, 2018.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0610

DEADLINE FOR RECEIPT: Wednesday, November 7, 2018

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 that the following technical changes be made:

*In (c), what is meant by "the commissioner or Deputy Commissioner deems appropriate"?
How is this determined?*

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

Amber May
Commission Counsel
Date submitted to agency: Friday, October 24, 2018

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

2
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, including conference telephone calls.

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

22
23 *History Note: Authority G.S. 97-80(a); 97-80(b); 97-83;*

24 *Eff. January 1, 1990;*

25 *Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000; March 15,*
26 *1995;*

27 *Recodified from 04 NCAC 10A .0610 Eff. June 1, ~~2018~~. 2018;*

28 *Amended Eff. December 1, 2018.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0611

DEADLINE FOR RECEIPT: Wednesday, November 7, 2018

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 that the following technical changes be made:

In (a), what is meant by "deemed convenience to witnesses and the Commission"? How is this determined?

In (e), will hearings really be cancelled all together in the event of inclement weather or a natural disaster? Is this language an accurate representation of the process? Perhaps this simply tracks some other language?

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

Amber May
Commission Counsel
Date submitted to agency: Friday, October 24, 2018

1 Rule 11 NCAC 23A .0611 is amended 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)~~ In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or
19 delayed 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.*
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1 Rule 11 NCAC 23A .0618 is repealed as published in 33:04 NCR 345 as follows:

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3 **11 NCAC 23A .0618 DISQUALIFICATION OF A COMMISSIONER OR DEPUTY COMMISSIONER**

4
5 *History Note: Authority G.S. 97-79(b); 97-80(a);*

6 *Eff. November 1, 2014;*

7 *Recodified from 04 NCAC 10A .0618 Eff. June 1, ~~2018~~, 2018;*

8 *Repealed Eff. December 1, 2018.*