

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: North Carolina Industrial Commission

RULE CITATION: All rules

RECOMMENDED ACTION:

- X 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:

These rules have a rather extensive recent history. In order to assist the Commissioners in reviewing the rules, staff believes it will be helpful to have a brief understanding of the history of these rules and how they came to the Commission for review in their present form.

The Industrial Commission was exempt from rulemaking under Article 2A until the legislature repealed that exemption in Session Law 2011-287. That law stated, in relevant part:

SECTION 19. G.S. 97-80(a) reads as rewritten:

"(a) The Commission ~~may make~~ shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes and not inconsistent with this Article, for carrying out the provisions of this Article. ~~The Commission shall request the Office of State Budget and Management to prepare a fiscal note for a proposed new or amended rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Commission shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared.~~

Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be."

SECTION 21.(a) G.S. 150B-1(c) reads as rewritten:

"(c) Full Exemptions. – This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

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- (2) *The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.*
- (3) *The Utilities Commission.*
- ~~(4) *The Industrial Commission.*~~
- (5) *The Employment Security Commission.*
- (6) *The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.*
- (7) *The North Carolina State Lottery.*
- (8) **(Expires June 30, 2012)** *Except as provided in G.S. 150B-21.1B, any agency with respect to contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."*

SECTION 21.(c) *Any existing rule contained in Title 4 of Chapter 10 of the North Carolina Administrative Code that has not been readopted in accordance with Article 2A of Chapter 150B of the General Statutes on or before December 31, 2012, shall expire. Any rule that has been readopted by the Industrial Commission in accordance with G.S. 150B-21.2(g) on or before December 31, 2012, shall remain in effect until the rule becomes effective pursuant to G.S. 150B-21.3.*

The Industrial Commission acted to adopt rules in accordance with the law and to avoid having its current rules expire. In the October, November and December 2012 meetings, the RRC reviewed over 150 rules adopted by the Industrial Commission and ultimately approved them all. Of those rules, 42 received the 10 letters of objection pursuant to G.S. 150B-21.3(b2) that subjected them to a delayed effective date and legislative review in the 2013 session.

Ultimately, 28 rules were disapproved by Session Law 2013-294 (attached). That law contained several mandates for the Industrial Commission. The mandates are broken down into groups of rules, which are categorized in this Staff Opinion based upon the specific guidance in the Session Law.

Specific language provided for the rewritten rule: *In Section 8 of the Session Law, the Industrial Commission was given specific guidance on how to rewrite the following Rules:*

1. 04 NCAC 10A .0405
2. 04 NCAC 10A .0601;
3. 04 NCAC 10A .0603;
4. 04 NCAC 10A .0605;
5. 04 NCAC 10A .0608;
6. 04 NCAC 10A .0701;
7. 04 NCAC 10A .0704;
8. 04 NCAC 10C .0103;
9. 04 NCAC 10C .0108; and
10. 04 NCAC 10C .0109.

No specific language provided for the rewritten rule: *The Industrial Commission was told to change other rules in the Session Law, but specific language was not provided in the bill. Those Rules were:*

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1. 04 NCAC 10A .0102;
2. 04 NCAC 10A .0609A; (staff notes that the Session Law changed G.S. 97-25 and the Industrial Commission was told to use that law to rewrite the Rule);
3. 04 NCAC 10A .0612;
4. 04 NCAC 10A .0613;
5. 04 NCAC 10E .0201;
6. 04 NCAC 10E .0202;
7. 04 NCAC 10E .0203;
8. 04 NCAC 10G .0104A; and
9. 04 NCAC 10G .0107.

Waiver Rules: There were eight disapproved rules that governed waivers of Industrial Commission rules. In Section 9 of the Session Law, the Industrial Commission was told to change the rules by adding the phrase “upon its own initiative only if the employee is not represented by counsel.” Those Rules are:

1. 04 NCAC 10A .0801;
2. 04 NCAC 10B .0501;
3. 04 NCAC 10C .0201;
4. 04 NCAC 10D .0110;
5. 04 NCAC 10E .0301;
6. 04 NCAC 10G .0110;
7. 04 NCAC 10H .0206; and
8. 04 NCAC 10I .0204.

In making the required changes in the above-rules, the Industrial Commission tended to use the language that was approved by the Commission in 2012 and use that language as the text upon which changes were made by adding or striking language as mandated by the Session Law. Staff believes that is consistent with the legislative mandate, which had the Industrial Commission make changes to the approved – but never codified – versions of the Rule from 2012 and not the language that is currently in the Code (which predates 2012). Therefore, the Commission has seen and approved much of the language in these Rules.

Rule 04NCAC .0105, Electronic Payment of Costs: This rule was also disapproved. The Industrial Commission has not submitted a rewritten rule in this packet. This is because the Session Law, in Section 10, ordered to agency to study the financial and economic impact and operational burdens on all parties by mandating the electronic submission of the fees. The Industrial Commission is required to report to the General Assembly in the 2014 Regular Session about the study.

Forms: In Section 7 of the Session Law, the Industrial Commission was instructed to adopt any new forms or substantive amendments to old forms made after July 1, 2013, as rules. It is important to note that the Industrial Commission was specifically told to adopt the form itself (notwithstanding G.S. 150B-2(8a)d., which states that forms are not rules; the contents of forms are). In addition, Section 8, subsection 12 specifically ordered the Commission to adopt a form for its subpoena (which is Rule 04 NCAC 10L .0104). Those Rules are:

1. Rule 04 NCAC 10L .0101;
2. Rule 04 NCAC 10L .0102;
3. Rule 04 NCAC 10L .0103; and

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4. Rule 04 NCAC 10L .0104.

Minutes: In Section 8, Subsection (12) of the Session Law, the Industrial Commission was told to adopt rules to govern areas covered by their minutes, which are precedential rulings made by the Industrial Commission. Those are:

1. 04 NCAC 10A .0410;
2. 04 NCAC 10E .0103;
3. 04 NCAC 10E .0104; and
4. 04 NCAC 10J .0101.

Current Procedural Posture: Given the interest of the regulated public and the legislators associated with the Session Law, the General Assembly wanted to tie up all loose ends on these rules by this summer. To that end, the law required the Industrial Commission to use the truncated process for temporary rulemaking under G.S. 150B-21.1 to establish the new permanent rules. Therefore, the agency had a shorter publication timeframe (30 business days, not 60 calendar days) before adoption, and the agency was not required to create a fiscal note or be certified prior to publication of the rules. It is extremely important to note, however, that these rules are proposed to be permanent rules. Please note further that if approved, the rules are not automatically subject to legislative review, but will be so if the Commission receives 10 letters of objection the day after approval.

SECTION 11. Notwithstanding G.S. 150B-21.2, the Industrial Commission shall adopt permanent rules in accordance with the provisions of this act using the procedure and time lines for temporary rules set forth in G.S. 150B-21.1(a3). Rules adopted by the Industrial Commission in accordance with this section shall be subject to review by the Rules Review Commission as provided by G.S. 150B-21.1(b); provided however, that if the rules are approved by the Rules Review Commission, they shall become effective as provided by G.S. 150B-21.3(b). Rules adopted pursuant to this section shall not be subject to G.S. 150B-19.1(h) or G.S. 150B-21.4. The Industrial Commission shall consult with the Office of Administrative Hearings to ensure that rules adopted in accordance with this section are submitted to the Rules Review Commission in time to be eligible for legislative disapproval in the 2014 Regular Session of the 2013 General Assembly. The rules of the Industrial Commission that were in effect on the effective date of S.L. 2011-287 shall remain in effect with regard to rules disapproved by Sections 1 and 2 of this act until rules adopted to replace the disapproved rules become effective pursuant to this section.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-294
SENATE BILL 174

AN ACT TO DISAPPROVE CERTAIN RULES ADOPTED BY THE NORTH CAROLINA INDUSTRIAL COMMISSION, TO PROVIDE SPECIFIC DIRECTIONS TO THE INDUSTRIAL COMMISSION TO REPLACE THE RULES, AND TO AMEND CERTAIN PROVISIONS OF THE WORKERS' COMPENSATION LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0102 (Official Forms), 04 NCAC 10A .0105 (Electronic Payment of Costs), 04 NCAC 10A .0405 (Reinstatement of Compensation), 04 NCAC 10A .0601 (Employer's Obligations Upon Notice; Denial of Liability...), 04 NCAC 10A .0603 (Responding to a Party's Request for Hearing), 04 NCAC 10A .0605 (Discovery), 04 NCAC 10A .0608 (Statement of Incident Leading to Claim), 04 NCAC 10A .0609A (Medical Motions and Emergency Medical Motions), 04 NCAC 10A .0612 (Depositions and Additional Hearings), 04 NCAC 10A .0613 (Expert Witnesses and Fees), 04 NCAC 10A .0701 (Review by Full Commission), 04 NCAC 10A .0704 (Remand from the Appellate Courts), 04 NCAC 10C .0103 (Definitions), 04 NCAC 10C .0109 (Vocational Rehabilitation Services Return to Work), 04 NCAC 10E .0201 (Document and Record Fees), 04 NCAC 10E .0202 (Hearing Costs or Fees), 04 NCAC 10E .0203 (Fees Set by the Commission), 04 NCAC 10G .0104A (Foreign Language Interpreters), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on October 18, 2012, are disapproved.

SECTION 2. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0801 (Suspension of Rules), 04 NCAC 10B .0501 (Suspension of Rules), 04 NCAC 10C .0108 (Interaction with Physicians), 04 NCAC 10C .0201 (Suspension of Rules), 04 NCAC 10D .0110 (Suspension of Rules), 04 NCAC 10E .0301 (Suspension of Rules), 04 NCAC 10G .0107 (Compensation of the Mediator), 04 NCAC 10G .0110 (Waiver of Rules), 04 NCAC 10H .0206 (Waiver of Rules), 04 NCAC 10I .0204 (Suspension of Rules), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on November 15, 2012, are disapproved.

SECTION 3. G.S. 97-18(k) reads as rewritten:

"(k) In addition to any other methods for reinstatement of compensation available under the Act, whenever the employer or insurer has admitted the employee's right to compensation, or liability has been established, the employee may move for reinstatement of compensation on a form prescribed by the Commission. ~~If the employer or insurer contests the employee's request for reinstatement, the matter shall be scheduled on a preemptive basis.~~ The form prescribed by the Commission shall contain the reasons for the proposed reinstatement of compensation, be supported by available documentation, and inform the employer of the employer's right to contest the reinstatement of compensation by filing an objection in writing with the Commission within 14 days

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of the date the employee's notice is filed with the Commission or within such additional reasonable time as the Commission may allow. If the employer or insurer contests the employee's request for reinstatement, the Commission shall conduct an informal hearing by telephone with the parties or their counsel. If either party objects to conducting the hearing by telephone, the Commission may conduct the hearing in person in Raleigh or at another location selected by the Commission. The parties shall be afforded an opportunity to state their position and to submit documentary evidence at the informal hearing. The employee may waive the right to an informal hearing and proceed to the formal hearing. The Commission's decision in the informal hearing is not binding in the subsequent hearings. If the application for Reinstatement of Payment of Disability Compensation is approved or not contested, then compensation shall be reinstated immediately and continue until further order of the Commission. The employer or employee may request a formal hearing pursuant to G.S. 97-83 on the Commission's decision approving or denying the employee's application for reinstatement. A formal hearing under G.S. 97-83 ordered or requested pursuant to this subsection shall be a hearing de novo on the employee's application for reinstatement of compensation and may be scheduled by the Commission on a preemptive basis. This subsection shall not apply to a request for a review of an award on the grounds of a change in condition pursuant to G.S. 97-47."

SECTION 4. G.S. 97-25 reads as rewritten:

"§ 97-25. Medical treatment and supplies.

(a) Medical compensation shall be provided by the employer.

(b) Upon the written request of the employee to the employer, the employer may agree to authorize and pay for a second opinion examination with a duly qualified physician licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission. If, within 14 calendar days of the receipt of the written request, the request is denied or the parties, in good faith, are unable to agree upon a health care provider to perform a second opinion examination, the employee may request that the Industrial Commission order a second opinion examination. The expense thereof shall be borne by the employer upon the same terms and conditions as provided in this section for medical compensation.

(c) Provided, however, if the employee so desires, an injured employee may select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission. In addition, in case of a controversy arising between the employer and the employee, the Industrial Commission may order necessary treatment. In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of disability. When deciding whether to grant an employee's request to change treatment or health care provider, the Commission may disregard or give less weight to the opinion of a health care provider from whom the employee sought evaluation, diagnosis, or treatment before the employee first requested authorization in writing from the employer, insurer, or Commission.

(d) The refusal of the employee to accept any medical compensation when ordered by the Industrial Commission shall bar the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal. Any order issued by the

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Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation.

(e) If in an emergency on account of the employer's failure to provide medical compensation, a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

(f) In claims subject to G.S. 97-18(b) and (d), a party may file an expedited, emergency, or other medical motion with the Office of the Chief Deputy Commissioner. The nonmoving party shall have the right to contest the motion. Motions and responses shall be submitted via electronic mail to the Commission, the opposing party and the opposing party's attorney, simultaneously. The Commission shall conduct an informal telephonic pretrial conference to determine if the motion warrants an expedited or emergency hearing. If the Commission determines that the motion does not warrant an expedited or emergency hearing, the motion shall be decided administratively within 60 days of the date the motion was filed pursuant to rules governing motions practices in contested cases. If the Commission determines that any party has acted unreasonably by initiating or objecting to a medical motion, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

(g) If the Commission determines that a medical motion should be expedited, each party shall be afforded an opportunity to state its position and to submit documentary evidence at an informal telephonic hearing. The medical motion shall contain documentation and support of the request, including the most relevant medical records and a representation that informal means of resolving the issue have been attempted in good faith, and the opposing parties' position, if known. The Commission shall determine whether deposition testimony of medical and other experts is necessary and if so shall order that the testimony be taken within 35 days of the date the motion is filed. For good cause shown, the Commission may reduce or enlarge the time to complete depositions of medical and other experts. Transcripts of depositions shall be expedited and paid for by the administrator, carrier, or employer. Transcripts shall be submitted electronically to the Commission within 40 days of the date the motion is filed unless the Commission has reduced or enlarged the time to complete the depositions. The Commission shall render a decision on the motion within five days of the date transcripts are due to the Commission.

(h) If the Commission determines that a medical motion is an emergency, the Commission shall make a determination on the motion within five days of receipt by the Commission of the medical motion. Motions requesting emergency medical relief shall contain the following:

- (1) An explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention.
- (2) A specific statement detailing the time-sensitive nature of the request to include relevant dates and the potential for adverse consequences to the employee if the recommended treatment is not provided emergently.
- (3) An explanation of opinions known and in the possession of the employee of additional medical or other relevant experts, independent medical examiners, and second opinion examiners.
- (4) Documentation known and in the possession of the employee in support of the request, including relevant medical records.

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(5) A representation that informal means of resolving the issue have been attempted."

SECTION 5. G.S. 97-79 is amended by adding a new subsection to read:

"(g) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes, for administrative motions, including practices and procedures for carrying out the provisions of this Article."

SECTION 6. G.S. 97-80 reads as rewritten:

"§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.

(a) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes and not inconsistent with this Article, for carrying out the provisions of this Article.

The Commission shall adopt rules establishing processes and procedure to be used under this Article.

Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be.

(b) The Commission or any member thereof, or any person deputized by it, shall have the power, for the purpose of this Article, to tax costs against the parties, to administer or cause to have administered oaths, to preserve order at hearings, to compel the attendance and testimony of witnesses, and to compel the production of books, papers, records, and other tangible things.

(c) The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed.

(d) The Commission may order testimony to be taken by deposition and any party to a proceeding under this Article may, upon application to the Commission, which application shall set forth the materiality of the evidence to be given, cause the depositions of witnesses residing within or without the State to be taken, the costs to be taxed as other costs by Commission. Depositions ordered by the Commission upon application of a party shall be taken after giving the notice and in the manner prescribed by law for depositions in action at law, except that they shall be directed to the Commission, the commissioner, or the deputy commissioner before whom the proceedings may be pending.

(e) A subpoena may be issued by the Commission and served in accordance with G.S. 1A-1, Rule 45. A party shall not issue a subpoena duces tecum less than 30 days prior to the hearing date except upon prior approval of the Commission. Upon a motion, the Commission may quash a subpoena if it finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. Each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county where the hearing is held.

(f) The Commission may by rule provide for and limit the use of interrogatories and other forms of discovery, including production of books, papers, records, and other tangible things, and it may provide reasonable sanctions for failure to comply with a Commission order compelling discovery.

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(g) The Commission or any member or deputy thereof shall have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to hold a person in civil contempt, as provided thereunder, for failure to comply with an order of the Commission, Commission member, or deputy. A person held in civil contempt may appeal in the manner provided for appeals pursuant to G.S. 97-85 and G.S. 97-86. The provisions of G.S. 5A-24 shall not apply to appeals pursuant to this subsection.

(h) The Commission or any member or deputy thereof shall also have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal contempt, subject to the limitations thereunder, (i) for ~~willful~~-willful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (ii) for ~~willful~~-willful disobedience of a lawful order of the Commission or a member or deputy thereof; or (iii) for ~~willful~~-willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, ~~willful~~-willful refusal to answer any legal and proper question when refusal is not legally justified. The Commission or any member or deputy thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall be before a district court judge, and venue lies throughout the district where the order was issued directing the person charged to appear. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing de novo before a superior court judge."

SECTION 7. G.S. 97-81(a) reads as rewritten:

"(a) The Commission shall prepare and cause to be printed, and upon request furnish, free of charge to any employee or employer, such blank forms and literature as it shall deem requisite to facilitate or prompt the efficient administration of this Article. Notwithstanding G.S. 150B-2(8a)d., any new forms or substantive amendments to old forms adopted after July 1, 2013, shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes. The Commission may authorize the use of electronic submission of forms and other means of transmittal of forms and notices when it deems appropriate."

SECTION 8. The Industrial Commission shall adopt rules to replace the rules disapproved by Sections 1 and 2 of this act, in accordance with the following directions:

- (1) With regard to **04 NCAC 10A .0601** (Employer's Obligations Upon Notice; Additional Medical Comp.), the Commission shall amend subsection (b) of the rule to provide that the letter of denial shall be sent to all known health care providers who have submitted bills and provided medical records to the employer or carrier.
- (2) With regard to **04 NCAC 10A .0603** (Responding to a Party's Request for Hearing), the Commission shall amend subsection (a) of the rule to delete the sentence "If a defendant files a request for hearing, the employee is not required to respond." The Commission shall amend subsection (b) of the rule to delete all references to "plaintiff" and substitute "moving party," and all references to "defendant" and substitute "nonmoving party."

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- (3) With regard to **04 NCAC 10A .0605** (Discovery), the Commission shall amend the rule by deleting the following phrase from subdivision (4): "including the sanctions specified in G.S. 1A-1, Rule 37."; and by deleting the following from subdivision (9): "The parties shall not submit motions to compel production of information otherwise obtainable under G.S. 97-25.6."
- (4) With regard to **04 NCAC 10A .0608** (Statement of Incident Leading to Claim), the Commission shall amend subsection (b) of the rule by adding the word "unreasonably" between the words "corporation" and "fails."
- (5) With regard to **04 NCAC 10A .0701** (Review by Full Commission), the Commission shall establish a procedure to track an appellant's electronic receipt of a Form 44 and notice of appeal from the Commission.
- (6) With regard to **04 NCAC 10A .0704** (Remand from the Appellate Courts), the Commission shall rewrite the rule to specifically allow for a stay of the deadline to submit a statement to the Commission on remand when a party files a petition for discretionary review or rehearing.
- (7) With regard to **04 NCAC 10C .0103** (Definitions), the Commission shall amend subdivision (3) to read as follows: "'Vocational rehabilitation" means the delivery and coordination of services under an individualized written plan, with the goal of assisting the injured worker to return to suitable employment or participate in education or retraining, as defined by subsection (5) of this rule or applicable statute."
- (8) With regard to **04 NCAC 10C .0108** (Interaction with Physicians), the Commission shall amend subsection (e)(1) by inserting the phrase "that is authorized or ordered" after the word "examination."
- (9) With regard to **04 NCAC 10C .0109** (Vocational Rehabilitation Services Return to Work), the Commission shall delete subsection (i) of the rule.
- (10) With regard to **04 NCAC 10A .0405** (Reinstatement of Compensation), the Commission shall delete subsections (a) through (g) and substitute the following:
 - "(a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks reinstatement of compensation pursuant to G.S. 97-18(k), the employee may notify the employer, carrier, or administrator, and the employer's, carrier's, or administrator's attorney of record, on a Form 23 Application to Reinstate Payment of Disability Compensation, or by the filing of a Form 33 Request that Claim be Assigned for Hearing.
 - (b) When reinstatement is sought by the filing of a Form 23 Application to Reinstate Payment of Disability Compensation, the original Form 23 Application to Reinstate Payment of Disability Compensation and the attached documents shall be sent to the Commission at the same time and by the same method by which a copy of the Form 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The employee shall specify the grounds and the alleged facts supporting the application

and shall complete the blank space in the "Important Notice to Employer" portion of Form 23 Application to Reinstate Payment of Disability Compensation by inserting a date 17 days from the date the employee serves the completed Form 23 Application to Reinstate Payment of Disability Compensation on the employer, carrier, or administrator and the attorney of record, if any. The Form 23 Application to Reinstate Payment of Disability Compensation shall specify the number of pages of documents attached that are to be considered by the Commission. Within 17 days from the date the employee serves the completed Form 23 Application to Reinstate Payment of Disability Compensation on the employer, carrier, or administrator and the attorney of record, if any, the employer, carrier, or administrator shall complete Section B of the Form 23 Application to Reinstate Payment of Disability Compensation and send it to the Commission and to the employee, or the employee's attorney of record, at the same time and by the same method by which the form is sent to the Commission.

- (c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review the Form 23 Application to Reinstate Payment of Disability Compensation and attached documentation and, without an informal hearing, render an Administrative Decision or Order as to whether there is sufficient basis under the Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be rendered within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a response to the Form 23 Application to Reinstate Payment of Disability Compensation. Either party may seek review of the Administrative Decision and Order as provided by Rule .0703 of this subchapter.
- (d) If the employer, carrier, or administrator timely objects to the Form 23 Application to Reinstate Payment of Disability Compensation, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 23 Application to Reinstate Payment of Disability Compensation unless the time is extended for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view toward conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the foregoing, the employee may waive the right to an informal hearing and proceed to a formal hearing by filing a request for hearing on a Form 33 Request that Claim be Assigned for Hearing. Either party may appeal the Administrative Decision and Order of the

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Commission as provided by Rule .0703 of this subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 Request that Claim be Assigned for Hearing. The employee has the burden of producing evidence on the issue of the employee's application to reinstate compensation. If the Deputy Commissioner reverses an order previously granting a Form 23 Application to Reinstate Payment of Disability Compensation motion, the employer shall promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

- (e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order to that effect, that shall be in lieu of a Form 33 Request that Claim be Assigned for Hearing, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall file a Form 33 Request that Claim be Assigned for Hearing or notify the Commission that a formal hearing is not currently necessary, within 30 days of the date of the Administrative Decision or Order. The effect of placing the case on the docket shall be the same as if the Form 23 Application to Reinstate Payment of Disability Compensation was denied, and compensation shall not be reinstated until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing."
- (11) With regard to 04 NCAC 10A .0609A (Medical Motions and Emergency Medical Motions), the Commission shall rewrite the rule in accordance with G.S. 97-25, as amended by Section 4 of this act.
- (12) With regard to 04 NCAC 10A .0102 (Official Forms), the Commission shall adopt a form for use as a subpoena that is in compliance with current North Carolina law. The Commission shall also review all prior minutes and administrative rulings of the Commission and where necessary adopt rules related to the processes and procedures outlined in the prior minutes and administrative rulings. The rules shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes.

SECTION 9. The Industrial Commission shall adopt rules to replace the following disapproved rules which relate to when the Commission may waive rules. In each case, the Commission shall amend references to granting a waiver "upon its own initiative" to read "upon its own initiative only if the employee is not represented by counsel."

- 04 NCAC 10A .0801 (Waiver of Rules)
04 NCAC 10B .0501 (Waiver of Rules)
04 NCAC 10C .0201 (Waiver of Rules)
04 NCAC 10D .0110 (Waiver of Rules)
04 NCAC 10E .0301 (Waiver of Rules)

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04 NCAC 10G .0110 (Waiver of Rules)

04 NCAC 10H .0206 (Waiver of Rules)

04 NCAC 10I .0204 (Waiver of Rules)

SECTION 10. The Industrial Commission shall study the financial and economic impact and operational burdens on all parties of mandating that costs and fees be submitted electronically as provided by 04 NCAC 10A .0105. The Commission shall submit a report of its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

SECTION 11. Notwithstanding G.S. 150B-21.2, the Industrial Commission shall adopt permanent rules in accordance with the provisions of this act using the procedure and time lines for temporary rules set forth in G.S. 150B-21.1(a3). Rules adopted by the Industrial Commission in accordance with this section shall be subject to review by the Rules Review Commission as provided by G.S. 150B-21.1(b); provided however, that if the rules are approved by the Rules Review Commission, they shall become effective as provided by G.S. 150B-21.3(b). Rules adopted pursuant to this section shall not be subject to G.S. 150B-19.1(h) or G.S. 150B-21.4. The Industrial Commission shall consult with the Office of Administrative Hearings to ensure that rules adopted in accordance with this section are submitted to the Rules Review Commission in time to be eligible for legislative disapproval in the 2014 Regular Session of the 2013 General Assembly. The rules of the Industrial Commission that were in effect on the effective date of S.L. 2011-287 shall remain in effect with regard to rules disapproved by Sections 1 and 2 of this act until rules adopted to replace the disapproved rules become effective pursuant to this section.

SECTION 12. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 6:17 p.m. this 18th day of July, 2013

Amanda J. Reeder
Commission Counsel
13

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0102

DEADLINE FOR RECEIPT: Monday, March 17, 2014

NOTE WELL: *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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 9, you state that the individual can get the forms "in person" but you don't give the physical address. Is that the information in Rule 10A .0101?

In (b), line 13, "employers" is misspelled.

Paragraph (b) is odd. The use of forms not given by the Commission is prohibited, but it's really not. What is the point of the prohibition language?

Replace the comma with a semicolon at the end of line 15, (b)(1).

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10A .0102 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10A .0102 OFFICIAL FORMS**

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

7 ~~(b) In reviewing an Opinion and Award of a Deputy Commissioner or of a sole Commissioner acting as the hearing~~
8 ~~officer, the Full Commission may sit en banc or in panels of three.~~

9 (a) Copies of the Commission's rules and forms may be obtained by contacting the Commission in person, by
10 written request mailed to 4340 Mail Service Center, Raleigh, NC 27699-4340, Attn.: Administrator, or from the
11 Commission's website at <http://www.ic.nc.gov/forms.html>.

12 (b) The use of any printed forms other than those provided by the Commission is prohibited except that insurance
13 carriers, self-insured employers, attorneys and other parties may reproduce forms for their own use, provided:

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

16 (2) the substituted form is identical in size and format with the Commission form.
17

18 *History Note: Authority G.S. 97-80(a); 97-81(a);*
19 *Eff. January 1, 1990;*
20 *Amended Eff. April 1, 2014; June 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0405

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I recognize that the language of this Rule comes from S.L. 2013-294, Section 8, Item 10, but I do have some questions and thoughts.

Do you really need to repeat the full name of the forms every time they are cited? And given that the forms will be in Rule, I encourage you to cite to that Rule the first time you give the citation.

It appears that in other Rules, the names of the forms are italicized. Why aren't they italicized here?

I know this language came from the Session Law, but this must be clarified: On Page 1, line 37 and Page 2, line 25, the term is "Decision or Order." On Page 2, lines 1 and 4, the term is "Decision and Order." Assuming this is the same thing, and it appears it is, then this term needs to be consistent.

On Page 2, lines 4 and 14, capitalize "Subchapter"

On Page 2, line 15, "de novo" needs to be italicized.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10A .0405 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, as follows:

04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION

~~(a) Amputation of any portion of the bone of a distal phalange of a finger or toe at or distal to the visible base of the nail will be considered as equivalent to the loss of one fourth of such finger or toe.~~

~~(b) Amputation of any portion of the bone of the distal phalange of a finger or toe proximal to the visible base of the nail will be considered as equivalent to the loss of one half of such finger or toe.~~

~~(c) Amputation through the forearm at a point so distal to the elbow as to permit satisfactory use of a prosthetic appliance with retention of full natural elbow function shall be considered amputation of the hand. Otherwise, it shall be considered amputation of the arm.~~

~~(d) Amputation through the lower leg at a point so distal to the knee as to permit satisfactory use of a prosthetic appliance with retention of full natural knee function shall be considered amputation of the foot. Otherwise, it shall be considered amputation of the leg.~~

(a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks reinstatement of compensation pursuant to G.S. 97-18(k), the employee may notify the employer, carrier, or administrator, and the employer's, carrier's, or administrator's attorney of record, on a Form 23 Application to Reinstate Payment of Disability Compensation, or by the filing of a Form 33 Request that Claim be Assigned for Hearing.

(b) When reinstatement is sought by the filing of a Form 23 Application to Reinstate Payment of Disability Compensation, the original Form 23 Application to Reinstate Payment of Disability Compensation and the attached documents shall be sent to the Commission at the same time and by the same method by which a copy of the Form 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The employee shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employer" portion of Form 23 Application to Reinstate Payment of Disability Compensation by inserting a date 17 days from the date the employee serves the completed Form 23 Application to reinstate Payment of Disability Compensation on the employer, carrier, or administrator and the attorney of record, if any. The Form 23 Application to Reinstate Payment of Disability Compensation shall specify the number of pages of documents attached that are to be considered by the Commission. Within 17 days from the date the employee serves the completed Form 23 Application to Reinstate Payment of Disability Compensation on the employer, carrier, or administrator and the attorney of record, if any, the employer, carrier, or administrator shall complete Section B of the Form 23 Application to Reinstate Payment of Disability Compensation and send it to the Commission and to the employee, or the employee's attorney of record, at the same time and by the same method by which the form is sent to the Commission.

(c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review the Form 23 Application to Reinstate Payment of Disability Compensation and attached documentation and, without an informal hearing, render an Administrative Decision or Order as to whether there is sufficient basis under the

1 Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be rendered
2 within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a
3 response to the Form 23 Application to Reinstate Payment of Disability Compensation. Either party may seek
4 review of the Administrative Decision and Order as provided by Rule .0703 of this subchapter.

5 (d) If the employer, carrier, or administrator timely objects to the Form 23 Application to Reinstate Payment of
6 Disability Compensation, the Commission shall conduct an informal hearing within 25 days of the receipt by the
7 Commission of the Form 23 Application to Reinstate Payment of Disability Compensation unless the time is
8 extended for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record
9 personally present with the Commission. The Commission shall make arrangements for the informal hearing with a
10 view toward conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30
11 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the
12 foregoing, the employee may waive the right to an informal hearing and proceed to a formal hearing by filing a
13 request for hearing on a Form 33 Request that Claim be Assigned for Hearing. Either party may appeal the
14 Administrative Decision and Order of the Commission as provided by Rule .0703 of this subchapter. A Deputy
15 Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and
16 shall not require a Form 33 Request that Claim be Assigned for Hearing. The employee has the burden of producing
17 evidence on the issue of the employee's application to reinstate compensation. If the Deputy Commissioner reverses
18 an order previously granting a Form 23 Application to Reinstate Payment of Disability Compensation motion, the
19 employer shall promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision,
20 notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

21 (e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order
22 to that effect, that shall be in lieu of a Form 33 Request that Claim be Assigned for Hearing, and the case shall be
23 placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or
24 administrator shall file a Form 33 Request that Claim be Assigned for Hearing or notify the Commission that a
25 formal hearing is not currently necessary, within 30 days of the date of the Administrative Decision or Order. The
26 effect of placing the case on the docket shall be the same as if the Form 23 Application to Reinstate Payment of
27 Disability Compensation was denied, and compensation shall not be reinstated until such time as the case is decided
28 by a Commissioner or a Deputy Commissioner following a formal hearing.

29
30 *History Note: Authority G.S. 97-18(k); 97-80(a);*

31 *Eff. January 1, 1990;*

32 *Amended Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0410

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

You currently have a Rule 04 NCAC 10A .0410, "Communication for Medical Information" which was approved by the Commission in October 2012 to become effective January 1, 2013. It was not disapproved by S.L. 2013-294. It is being held in abeyance until the other rules are approved. So, what is this Rule? Should it have a different citation or are you trying to repeal the approved version of Rule 04 NCAC 10A .0410? (If this an attempted repeal, this is not the correct way to do so and is not compliant with the APA.)

Is this Rule a product of minutes that is being created under S.L. 2013-294, Section 8, subsection 12?

For the language on lines 5 and 6, wouldn't it be clearer to state, "The process for the Commission to approve safety rules or regulations adopted by an employer as set forth in G.S. 97-12 is as follows:" and then state that the employer has to develop rules consistent with Item (1), then send them to the Commission and the Commission approve them?

In Item 1, line 8, fix the margin.

Also in Item 1, line 8, if you are using another standard and incorporating it by reference, you must use the guidance of G.S. 150B-21.6, and tell people where they can find the standard.

In Item (2), how does the employer file these in writing? Using the address in Rule .0102? If so, state that. Or emailing?

Item (3) does not flow well. Why not state, "The Commission has returned a copy of the rules bearing a certificate of approval to the employer."

On line 11, replace "have been" with "were"

What happens if the Safety Director doesn't approve them? Can the employer appeal?

As I understand it, the safety rules referenced here only rules that the employer makes regarding worker safety, and thus, complies with the statute below. Is my understanding correct?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 13, 2014

§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of statutory duty, safety regulation or rule.

No compensation shall be payable if the injury or death to the employee was proximately caused by:

- (1) His intoxication, provided the intoxicant was not supplied by the employer or his agent in a supervisory capacity to the employee; or
- (2) His being under the influence of any controlled substance listed in the North Carolina Controlled Substances Act, G.S. 90-86, et seq., where such controlled substance was not by prescription by a practitioner; or
- (3) His willful intention to injure or kill himself or another.

When the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten percent (10%). When the injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer and approved by the Commission and brought to the knowledge of the employee prior to the injury compensation shall be reduced ten percent (10%). The burden of proof shall be upon him who claims an exemption or forfeiture under this section.

"Intoxication" and "under the influence" shall mean that the employee shall have consumed a sufficient quantity of intoxicating beverage or controlled substance to cause the employee to lose the normal control of his or her bodily or mental faculties, or both, to such an extent that there was an appreciable impairment of either or both of these faculties at the time of the injury.

A result consistent with "intoxication" or being "under the influence" from a blood or other medical test conducted in a manner generally acceptable to the scientific community and consistent with applicable State and federal law, if any, shall create a rebuttable presumption of impairment from the use of alcohol or a controlled substance. (1929, c. 120, s. 13; 1975, c. 740; 2005-448, s. 2.)

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10A .0410 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10A .0410 SAFETY RULES**

5 The safety rules or regulations adopted by an employer qualify as approved by the Commission within the meaning
6 of G.S. 97-12 if the following requirements are satisfied:

7 (1) The rules include the general provisions of the safety rules outlined by the American National
8 Standards Institute and the Occupational Safety and Health Act.

9 (2) The rules have been filed in writing with the Commission's Safety Education Director.

10 (3) A copy of the rules bearing a certificate of approval from the Commission has been returned to the
11 employer. The certificate of approval shall indicate that the rules have been reviewed and found
12 by the Safety Education Director of the Commission to be in compliance with the general rules of
13 the American National Standards Institute and the Occupational Safety and Health Act and that the
14 rules are approved by the Commission pursuant to G.S. 97-12.

15
16 *History Note: Authority G.S. 97-12; 97-80(a);*
17 *Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0601

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 12, define or delete "reasonable." If you relying upon the language in G.S. 97-18(j) which states:

(j) The employer or insurer shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in subsections (b), (c), or (d) of this section. **When an employee files a claim for compensation with the Commission, the Commission may order reasonable sanctions against an employer or insurer which does not,** within 30 days following notice from the Commission of the filing of a claim, or within such reasonable additional time as the Commission may allow, do one of the following:

Then you may just wish to refer to "sanctions pursuant to G.S. 97-18(j)" instead.

In (a)(1) and (2), lines 19 and 22, that is not the correct way to insert or delete punctuation. See Rule 26 NCAC 02C .0108(7).

In (a)(1) through (3), you refer to several forms. Where are those forms in Rule? Or are those not new forms, such that the requirement of S.L. 2013-294 Section 7 would not apply?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10A .0601 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, as follows:

SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES

04 NCAC 10A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND SANCTIONS

~~(a) The employer or its insurance carrier shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in G.S. 97-18(b), (c), or (d).~~

~~(b)(a) When an~~ Upon the employee's employee files filing of a claim for compensation with the Commission, the Commission may order reasonable sanctions against the employer or its insurance carrier ~~which if it~~ does not, within 30 days following notice from the Commission of the filing of the claim, or 90 days when a disease is alleged to be from exposure to chemicals, fumes, or other materials or substances in the workplace, ~~or within such reasonable additional time as the Commission may allow~~, do one of the following:

- (1) ~~Notify~~ File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify the Commission and the employee in writing that ~~if the employer~~ is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under G.S. 97-18(b);
- (2) ~~Notify~~ File a Form 61 *Denial of Workers' Compensation Claim* to notify the Commission and the employee that ~~if the employer~~ denies the employee's right to compensation consistent with G.S. 97-18(c);
- (3) File a Form 63 *Notice to Employee of Payment of Compensation Without Prejudice* ~~Initiate payments without prejudice and without liability and satisfy the requirements of~~ consistent with G.S. 97-18(d).

~~For purposes of this Rule, reasonable sanctions shall not prohibit the employer or its insurance carrier from contesting the compensability of and its liability for the claim.~~

Requests for extensions of time to comply with G.S. 97-18(j) ~~this rule may~~ shall be addressed to the ~~Executive Secretary, Claims Administration Section.~~

~~(c)(b) If the employer or insurance carrier denies~~ When liability in any case, case is denied, the employer or insurance carrier shall provide a detailed statement of the basis of denial ~~must that shall~~ be set forth in a letter of denial or Form ~~61, 61~~ *Denial of Workers' Compensation Claim*, and ~~which that~~ shall be sent to the plaintiff or his-employee's attorney of record, if any record or the employee, if unrepresented, all known health care providers ~~which who~~ have submitted bills and provided medical records to the employer/carrier, employer or carrier, and the Industrial Commission. The detailed statement of the basis of denial shall set forth a statement of the facts, as alleged by the employer, concerning the injury or any other matter in dispute; a statement identifying the source,

1 ~~by name or date and type of document, of the facts alleged by the employer, and a statement explaining why the~~
2 ~~facts, as alleged by the employer, do not entitle the employee to workers' compensation benefits.~~

3
4 *History Note:* Authority G.S. 97-18; 97-80(a); 97-81(a);
5 Eff. January 1, 1990;
6 Amended Eff. April 1, 2014; August 1, 2006; June 1, 2000.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0603

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I see in (a) that you struck the reference to "employee" and "employer, carrier or counsel for the defendant" and replaced it with "parties." Given that G.S. 97-83 specifically says either party may make an application for a hearing.

In (b), line 11, replace "which" with "that" to be consistent with line 10.

In (b), lines 12, 14, and 16, that is not the correct way to insert or delete punctuation. See Rule 26 NCAC 02C .0108(7).

Is the removal of (b)(5) and (6) due to comments received?

On lines 22 and 23, that is not the proper way to change the numeral in the parenthesis. State: ~~(7)~~(5)

On line 24, in order to be consistent, state "party or parties"

In Paragraph (c), you refer to Form 33R. Is that form in a Rule? Or is it not new, such that the requirement of S.L. 2013-294 Section 7 would not apply?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10A .0603 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

04 NCAC 10A .0603 RESPONDING TO A PARTY'S REQUEST FOR HEARING

(a) No later than 45 days from receipt of ~~the Request~~ a request for ~~Hearing~~, hearing from [an employee] a party, the self insured employer, insurance carrier, or counsel for the defendant(s) the opposing party or parties shall file with the Industrial Commission a response to the ~~Request~~ request for ~~Hearing~~, hearing.

(b) ~~This~~ The response shall contain the following:

(1) ~~The~~ the basis of the disagreement between the parties, including a statement of the ~~specific~~ issues raised by the ~~plaintiff moving party~~ which ~~that~~ are conceded and the ~~specific~~ issues raised by the ~~plaintiff moving party~~ which are ~~denied~~, denied;

(2) ~~The~~ the date of the injury, if it is contended to be different than that alleged by the ~~plaintiff moving party~~;

(3) ~~The~~ the part of the body injured, if it is contended to be different than that alleged by the ~~plaintiff moving party~~;

(4) ~~The~~ the city and county where the injury occurred, if they are ~~contented~~ contended to be different than that alleged by the ~~plaintiff moving party~~;

~~(5)~~ The [the] names and addresses of all doctors and other expert witnesses whose testimony is needed by the defendant(s) [non moving party];

~~(6)~~ The [the] names of all lay witnesses known by the defendant(s) non moving party whose testimony is to be taken. [taken];

~~(57)~~ An an estimate of the time required for the hearing of the ~~case~~, case; and

~~(68)~~ The ~~the~~ telephone ~~number(s)~~ number(s), and ~~address(es)~~ email address(es), and mailing address(es) of the party(ies) responding to the ~~Request for Hearing~~, request for hearing and their legal counsel.

(c) ~~Utilization of a A Form 33R, Response to Request for Hearing; 33R Response to Request that Claim be Assigned for Hearing, which is completed in full and filed with the Docket Section of the Commission, shall be the sole means of constitute~~ compliance with this Rule. A copy of the Form 33R Response to Request that Claim be Assigned for Hearing ~~Response to Request for Hearing~~ shall be forwarded to the attorneys for all opposing parties or attorneys, if such have been retained. the opposing parties themselves, if unrepresented. In the event of a request for hearing by a defendant, the employee shall not be required to respond. Extensions of time within which to file a response shall be granted for good cause shown.

*History Note: Authority G.S. 97-80(a); 97-83;
Eff. January 1, 1990;
Amended Eff. April 1, 2014; June 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0605

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In this Rule, you refer to some forms that are not in this set of Rules. Are those forms in a Rule? Or are they not new, such that the requirement of S.L. 2013-294 Section 7 would not apply?

On line 6, you state this rule governs interrogatories. However, beginning with Item (5), you include reference to a request for production of documents. Those are two different things in the Rules of Civil Procedure; so, is this is intended to read "interrogatories and production of documents"?

In Item (2) when you speak of filing or acceptance of the claim, you mean with/ by the Commission?

In Item (3), line 22, replace "represent" with "state"

On lines 23 and 24, what do you mean "and the opposing parties' position"?

Delete or define "reasonable" on line 24.

On line 29, you state the Commission "may" issue an order. When will the Commission not issue the order? Or do you mean "shall"?

On Page 1, lines 30, and 33 (both places) and Page 2, line 2, that is not the proper way to insert a comma. See Rule 26 NCAC 02C .0108(7).

In Item (5), line 33, you state that the discovery must be "relevant" to the issue presently in dispute. Relevant as determined by whom? But later in Item (5), Page 2, line 2, you state that the matter must only "relate" to an issue in dispute. Do you mean to state "is relevant to an issue..."?

On Page 2 in Item (5), you published Chapter 08C and need to show the change to the proper formatting.

In Item 6, Page 2, line 7, replace "Up to a time" to "Until"

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 13, 2014

In Item 7, line 10, I don't know why you are deleting "and approval by the Commission," as I think it makes the Rule read better.

In Sub-Item (8)(b), who determines if the motion is "pertinent"? The Commission or the parties?

On line 24, hyphenate "above-listed"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10A .0605 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

04 NCAC 10A .0605 DISCOVERY

In addition to depositions and production of books and records provided for in G.S. 97-80, parties may obtain discovery by the use of interrogatories as follows:

(1) Any party may serve upon any other parties written interrogatories, up to 30 in number, including subparts thereof, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available from the party interrogated.

~~(a)(2)~~ Interrogatories may, without leave of the ~~Industrial~~ Commission, be served upon any party after the filing of a Form ~~48~~, 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent, Form ~~48B~~, 18B Claim by Employee, Representative, or Dependent for Benefits for Lung Disease, or Form ~~33~~, 33 Request that Claim be Assigned for Hearing, or after the acceptance of a claim.

~~(b)(3)~~ Each interrogatory shall be answered separately and ~~fully~~ in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers ~~are to~~ shall be signed by the person making them and the objections shall be signed by the party making them. The party on whom the interrogatories have been served shall serve a copy of the ~~answers~~, answers and objections, if any, within 30 days after service of the interrogatories. The parties may stipulate to an extension of time to respond to the interrogatories. A motion to extend the time to respond shall represent that an attempt to reach agreement with the opposing party to informally extend the time for response has been unsuccessful and the opposing parties' position or that there has been a reasonable attempt to contact the opposing party to ascertain its position.

~~(c)(4)~~ If there is an objection to or other failure to answer an interrogatory, the party submitting the interrogatories may move the ~~Industrial~~ Commission for an order compelling answer. If the ~~Industrial~~ Commission orders answer to an interrogatory within a time certain and no answer is made or the objection is still lodged, the ~~Industrial~~ Commission may issue an order with ~~appropriate sanctions, including but not limited to the sanctions specified in Rule 37 of the North Carolina Rules of Civil Procedure.~~

~~(2)(5)~~ Interrogatories and requests for production of documents shall ~~may~~ relate to matters ~~which that~~ are not privileged, ~~which that~~ are relevant to an issue ~~presently~~ in dispute, or ~~which that~~ the requesting party reasonably believes may later be disputed. ~~Signature~~ The signature of a party or attorney serving interrogatories or requests for production of documents constitutes a certificate by such person that he or she has personally read each of the interrogatories and requests for production of documents, that no such interrogatory or request for production of documents will oppress a party

or cause any unnecessary expense or delay, that the information requested is not known or equally available to the requesting party, and that the interrogatory or requested document relates to an issue presently in dispute or ~~which that~~ the requesting party reasonably believes may later be in dispute. A party may serve an interrogatory, however, to obtain verification of facts relating to an issue presently in dispute. Answers to interrogatories may be used to the extent permitted by ~~the rules of evidence.~~ Chapter 8C of the North Carolina General Statutes.

~~(6)~~ Up to the time a matter is calendared for a hearing, parties may serve requests for production of documents without leave of the Commission.

~~(3)(7)~~ Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may be used only upon motion and approval by the Industrial Commission or by agreement of the parties. The Commission shall approve the motion if it is shown to be in the interests of justice or to promote judicial economy.

~~(4)~~ Notices of depositions, discovery requests and responses pertinent to a pending motion, responses to discovery following a motion or order to compel, and responses shall be filed with the Commission, as well as served on the opposing party. Otherwise, discovery requests and responses, including interrogatories and requests for production of documents shall not be filed with the Commission.

~~(8)~~ Discovery requests and responses, including interrogatories and requests for production of documents, shall not be filed with the Commission, except for the following:

(a) notices of depositions;

(b) discovery requests and responses pertinent to a pending motion;

(c) responses to discovery following a motion or order to compel; and

(d) post-hearing discovery requests and responses.

The above listed documents shall be filed with the Commission, as well as served on the opposing party.

~~(5)(9)~~ Sanctions may shall be imposed under this Rule for failure to comply with a Commission order compelling discovery. A motion by a party or its attorney to compel discovery under this Rule and 4 NCAC 10A .607 Rule .0607 of this Subchapter shall represent that informal means of resolving the discovery dispute have been attempted in good faith and state briefly the opposing parties' position or that there has been a reasonable attempt to contact the opposing party and ascertain its position.

History Note: Authority G.S. 97-80(a); 97-80(f);

Eff. January 1, 1990;

Amended Eff. April 1, 2014; January 1, 2011; June 1, 2000.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0608

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), lines 5 and 10, state "his or her."

In (a), line 8, that is not the proper way to insert a comma after "carrier." See Rule 26 NCAC 02C .0108(7).

In Paragraph (a), you refer to Form 33. Is that form in a Rule? Or is it not new, such that the requirement of S.L. 2013-294 Section 7 would not apply?

Please note, the use of the term "unreasonably" is required by S.L. 2013-294, Section 8(4), but does your regulated public know what is "unreasonable"?

SECTION 8. The Industrial Commission shall adopt rules to replace the rules disapproved by Sections 1 and 2 of this act, in accordance with the following directions:

(4) With regard to 04 NCAC 10A .0608 (Statement of Incident Leading to Claim), the Commission shall amend subsection (b) of the rule by adding the word "unreasonably" between the words "corporation" and "fails."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10A .0608 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM**

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

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

17
18 *History Note: Authority G.S. 97-80(a);*
19 *Eff. January 1, 1990;*
20 *Amended Eff. April 1, 2014; June 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0609A

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I am not familiar with the Industrial Commission, so I wanted to check: G.S. 97-25 speaks to the "Commission" making findings. I take it that the general operation of the Commission allows the delegation to Deputy Commissioners? Are you relying upon 97-84 here?

In (a), Page 2, line 28, you were correct to amend the language to state "and" to conform to the statute. However, you published with "or" and need to show that change.

On line 29, change "any." to "represented." which appears to be more consistent with the language in other rules.

In (c), line 34, did you mean to strike "[counsel's]"? I think you did.

Also in (c), is there a form for Notice of Representation or do attorneys use what they would use in civil court?

Page 3, line 1, strike "with" and "sent" and instead state "and send a copy of the notice ~~sent~~ to all other..."

In (d), you refer to "all motions requesting medical relief other than emergency..." The statute refers to "expedited, emergency or other medical motion." (G.S. 97-25(f)) Is it your intent to deal with expedited and all medical motions the same?

In (d)(2), I think it would be much clearer to state. "the claimants name. If the claimant is unrepresented... If the claimant is represented..." Of course, I am assuming the claimants name is always required. If it is not, leave out "the claimants name." And note the same suggestion for (e)(2).

I take it your regulated public knows the terms "employer code" [(d)(3)], "carrier code" [(d)(4)] and "employer/carrier" [(d)(5) and (6)]?

In (d), supply either (5) or (6)? Note the same question for Subparagraphs (e)(5) and (6).

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

In (d)(9), do you mean the initial claim? Is there a reason the forms aren't in numerical order? I know you are proposing to adopt Form 21 in this packet of rules. Are Forms 60 and 63 in rule? And I take it that "Commission Opinion and Award" is different from an "Order" on line 19? Note, the new language needs to be correctly inserted, showing that "compensability" on line 19 originally ended with a semicolon.

In (d)(13), do you mean the opposing parties' position regarding the necessity of the motion? Note the same question for (e)(10).

Is there a reason that (d), lines 3-4, and (e), line 30, do not have parallel language?

In (e)(1), does the party not need to state it is an emergency medical motion pursuant to G.S. 97-25?

I note that Subparagraphs (e)(7) through (10) substantially restate that requirements of G.S. 97-25(h). Does the agency feel that, given the complexity of the statute and the requirements, it is best to restate them in Rule with the other requirements? Further, I note that while (d)(9) required supporting documentation, (e) does not and it is required by G.S. 97-25(h)(4), so if you're reciting the substance of the law, I think you need to add that here.

In (f), I believe you need to add language to line 15. "clarify the issues presented"?

Also in (f), I know this came from the legislation, but how is a party going to submit documentary evidence during a telephone conference? Given the nature of that evidence (ideas represented on material substances, such as written instruments, documents, etc. as per my Blacks Dictionary, Fifth Edition.) Wouldn't that evidence need to be presented before the call? Or will it be done via Skype or something similar? Why doesn't the rule address this?

What are you trying to say in (g)? Are you trying to say the scope of the review will be based only upon the email submission of certain evidence and thus, waive the hearing?

On Page 4, line 26, "motion" should not be capitalized.

In Paragraph (k), line 34, the Order is an acknowledgement of receipt?

Also in (k), line 35, I take it you mean that the parties are allowed to file briefs if they desire, not "may" if the Commission allows it? Who is setting the abbreviated schedule? And who determines if the briefs are necessary? The Commission or the party?

Also on line 35, is "Chair of the Panel" a term of art? Why is used like this here, but referred to as "panel chair" later on in the same paragraph?

On Page 5, line 1, are you saying the Panel has the ability to waive oral arguments? I don't read the statute to require oral arguments, so instead aren't you saying the Panel won't grant the request?

In Paragraph (l), replace "will" with "shall."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

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: North Carolina Industrial Commission

RULE CITATION: Rule 04 NCAC 10A .0609A

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:

Paragraph (h) states that the Industrial Commission is restricting the timeframe for depositions to 35 days and for transcripts of the same to 40 days. But G.S. 97-25(g) allows the Commission to reduce or enlarge that timeframe for good cause shown. As written, the Rule contradicts clear statutory language that the Deputy Commissioners can, for good cause shown, reduce or expand the time. Staff notes the Rule states that parties are no longer allowed to have the expansion or reduction that is allowed by statute.

Staff does not believe the Industrial Commission to abrogate the statute, and is not aware of other statutory authority that would allow this.

*Amanda J. Reeder
Commission Counsel*

§ 97-25. Medical treatment and supplies.

- (a) Medical compensation shall be provided by the employer.
- (b) Upon the written request of the employee to the employer, the employer may agree to authorize and pay for a second opinion examination with a duly qualified physician licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission. If, within 14 calendar days of the receipt of the written request, the request is denied or the parties, in good faith, are unable to agree upon a health care provider to perform a second opinion examination, the employee may request that the Industrial Commission order a second opinion examination. The expense thereof shall be borne by the employer upon the same terms and conditions as provided in this section for medical compensation.
- (c) Provided, however, if the employee so desires, an injured employee may select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission. In addition, in case of a controversy arising between the employer and the employee, the Industrial Commission may order necessary treatment. In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of disability. When deciding whether to grant an employee's request to change treatment or health care provider, the Commission may disregard or give less weight to the opinion of a health care provider from whom the employee sought evaluation, diagnosis, or treatment before the employee first requested authorization in writing from the employer, insurer, or Commission.
- (d) The refusal of the employee to accept any medical compensation when ordered by the Industrial Commission shall bar the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation.
- (e) If in an emergency on account of the employer's failure to provide medical compensation, a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.
- (f) In claims subject to G.S. 97-18(b) and (d), a party may file an expedited, emergency, or other medical motion with the Office of the Chief Deputy Commissioner. The nonmoving party shall have the right to contest the motion. Motions and responses shall be submitted via electronic mail to the Commission, the opposing party and the opposing party's attorney, simultaneously. The Commission shall conduct an informal telephonic pretrial conference to determine if the motion warrants an expedited or emergency hearing. If the Commission determines that the motion does not warrant an expedited or emergency hearing, the motion shall be decided administratively within 60 days of the date the motion was filed pursuant to rules

*Amanda J. Reeder
Commission Counsel*

governing motions practices in contested cases. If the Commission determines that any party has acted unreasonably by initiating or objecting to a medical motion, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

(g) If the Commission determines that a medical motion should be expedited, each party shall be afforded an opportunity to state its position and to submit documentary evidence at an informal telephonic hearing. The medical motion shall contain documentation and support of the request, including the most relevant medical records and a representation that informal means of resolving the issue have been attempted in good faith, and the opposing parties' position, if known. The Commission shall determine whether deposition testimony of medical and other experts is necessary and if so shall order that the testimony be taken within 35 days of the date the motion is filed. **For good cause shown, the Commission may reduce or enlarge the time to complete depositions of medical and other experts.** Transcripts of depositions shall be expedited and paid for by the administrator, carrier, or employer. Transcripts shall be submitted electronically to the Commission within 40 days of the date the motion is filed **unless the Commission has reduced or enlarged the time to complete the depositions.** The Commission shall render a decision on the motion within five days of the date transcripts are due to the Commission.

(h) If the Commission determines that a medical motion is an emergency, the Commission shall make a determination on the motion within five days of receipt by the Commission of the medical motion. Motions requesting emergency medical relief shall contain the following:

- (1) An explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention.
- (2) A specific statement detailing the time-sensitive nature of the request to include relevant dates and the potential for adverse consequences to the employee if the recommended treatment is not provided emergently.
- (3) An explanation of opinions known and in the possession of the employee of additional medical or other relevant experts, independent medical examiners, and second opinion examiners.
- (4) Documentation known and in the possession of the employee in support of the request, including relevant medical records.
- (5) A representation that informal means of resolving the issue have been attempted. (1929, c. 120, s. 25; 1931, c. 274, s. 4; 1933, c. 506; 1955, c. 1026, s. 2; 1973, c. 520, s. 1; 1991, c. 703, s. 3; 1997-308, s. 1; 1999-150, s. 1; 2005-448, s. 6.2; 2011-287, s. 6; 2013-294, s. 4.)

*Amanda J. Reeder
Commission Counsel*

1 Rule 04 NCAC 10A .0609A is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS**

5 ~~(a) Expedited Medical Motions:~~

6 ~~(1) Medical motions pursuant to N.C. Gen. Stat. §97-25 brought before the Office of the Executive~~
7 ~~Secretary for an administrative ruling shall comply with applicable provisions of Rule 609 and~~
8 ~~shall be submitted electronically to medicalmotions@ic.nc.gov, unless electronic submission is~~
9 ~~unavailable to the party.~~

10 ~~(2) A party may file with the Deputy Commissioner Section a request for an administrative ruling on~~
11 ~~a medical motion. A party, also, may appeal an Order from the Executive Secretary's Office on an~~
12 ~~Expedited Medical Motion by giving notice of appeal to the Dockets Department within 15 days~~
13 ~~of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant~~
14 ~~to Rule 703(1). The Motion shall contain a designation as an administrative "Expedited Medical~~
15 ~~Motion", documentation in support of the request, including the most recent medical record/s and~~
16 ~~a representation that informal means of resolving the issue have been attempted in good faith, and~~
17 ~~the opposing party's position, if known.~~

18 ~~(A) A Pre Trial Conference will be held immediately to clarify the issues. Parties are~~
19 ~~encouraged to consent to a review of the contested issues by electronic mail submission~~
20 ~~of only relevant medical records and opinion letters.~~

21 ~~(B) If depositions are deemed necessary by the Deputy Commissioner, only a brief period for~~
22 ~~taking the same will be allowed. Preparation of the transcript will be expedited and will~~
23 ~~initially be at the expense of defendants. Requests for independent medical examinations~~
24 ~~may be denied unless there is a demonstrated need for the evaluation.~~

25 ~~(C) Written arguments and briefs shall be limited in length, and are to be filed within five~~
26 ~~days after the record is closed.~~

27 ~~(3) A party may appeal an Order by a Deputy Commissioner on an Expedited Medical Motion by~~
28 ~~giving notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of~~
29 ~~the ruling on a Motion to Reconsider the Order filed pursuant to Rule 703(1).~~

30 ~~(A) A letter expressing an intent to appeal a Deputy Commissioner's Order on an Expedited~~
31 ~~Medical Motion shall be considered notice of appeal to the Full Commission, provided~~
32 ~~that it clearly specifies the Order from which appeal is taken.~~

33 ~~(B) After receipt of notice of appeal, the appeal will be acknowledged by the Dockets~~
34 ~~Department within three (3) days by sending an appropriate Order under the name of the~~
35 ~~Chair of the Panel to which the appeal is assigned. The parties may be permitted to file~~
36 ~~briefs on an abbreviated schedule in the discretion of the panel chair. The panel chair will~~
37 ~~also determine if oral arguments are to be by telephone, in person, or waived. All~~

correspondence, briefs, or motions related to the appeal shall be addressed to the panel chair with a copy to the law clerk of the panel chair.

(b) ~~Emergency Medical Motions:~~

(1) ~~Motions requesting emergency medical relief administratively shall contain the following:~~

~~(A) A boldface, or otherwise emphasized, designation as "Emergency Medical Motion."~~

~~(B) An explanation of the need for a shortened time period for review, including any hardship that warrants immediate attention/action by the Commission.~~

~~(C) A statement of the time sensitive nature of the request, with specificity.~~

~~(D) Detailed dates and times related to the issue raised and to the date a ruling is requested.~~

~~(E) Documentation in support of the request, including the most recent medical records.~~

~~(F) A representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known.~~

(2) ~~A party may file an Emergency Medical Motion with the Executive Secretary's Office, the Chief Deputy Commissioner, or the Office of the Chair. A proposed Order shall be provided with the motion. The non-moving party(ies) will be advised regarding any time allowed for response and may be advised whether informal telephonic oral argument is necessary.~~

(3) ~~Emergency Medical Motions and responses thereto shall be submitted electronically, unless electronic submission is unavailable to the party.~~

~~(A) Emergency Medical Motions and responses thereto filed with the Executive Secretary's Office shall be submitted to medicalmotions@ic.nc.gov.~~

~~(B) Emergency Medical Motions filed with the Chief Deputy Commissioner shall be submitted electronically directly to the Chief Deputy Commissioner and his/her legal assistant.~~

~~(C) Emergency Medical Motions filed with the Chair of the Commission shall be submitted electronically to the Chair, his/her legal assistant, and his/her law clerk.~~

(a) Medical motions brought pursuant to G.S. 97-25, and responses thereto, shall be brought before the Office of the Chief Deputy Commissioner and shall be submitted electronically to medicalmotions@ic.nc.gov. Motions and responses shall be submitted simultaneously to the Commission and the opposing party or opposing party's counsel, if any.

(b) Once notification has been received by the parties that a medical motion has been assigned to a Deputy Commissioner, subsequent filings and communication shall be submitted directly to the Deputy Commissioner assigned.

(c) Upon receipt of a medical motion, carriers, third-party administrators, and employers [who are not represented] shall immediately [assign counsel and] send notification of the [counsel's] name, email address, telephone number and fax number of the attorney appearing on their behalf to medicalmotions@ic.nc.gov. An attorney who is retained by a party in any proceeding before the Commission shall also file a Notice of Representation with the Docket

Director at dockets@ic.nc.gov with a copy of the notice sent to all other counsel and all other unrepresented parties involved in the proceeding.

(d) 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;
- (2) the claimant's name and, if unrepresented, claimant's email address, telephone number, and fax number. If represented, the name, email address, telephone number and fax number of claimant's counsel;
- (3) the employer's name and employer code;
- (4) the carrier or third party administrator's name, carrier code, email address, telephone number and fax number;
- (5) 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) a statement of the treatment or relief requested;
- (8) a statement of the medical diagnosis of claimant and the treatment recommendation and name of the health care provider that is the basis for the motion;
- (9) a statement as to whether the claim has been admitted on a Form 60, Form 63, Form 21 or is subject to a prior Commission Opinion and Award or Order finding compensability, with supporting documentation attached;
- (10) a statement of the time-sensitive nature of the request;
- (11) an explanation of opinions known and in the possession of the employee of additional medical or other relevant experts, independent medical examiners, and second opinion examiners;
- (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether the plaintiff 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) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known; and
- (14) a proposed Order.

(e) Motions requesting emergency medical relief shall contain the following:

- (1) a boldface or otherwise emphasized, designation as "Emergency Medical Motion";
- (2) the claimant's name and, if unrepresented, claimant's email address, telephone number, and fax number. If represented, the name, email address, telephone number and fax number of claimant's counsel;
- (3) the employer's name and employer code;
- (4) the carrier or third party administrator's name, carrier code, email address, telephone number and fax number;

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

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

(9) an explanation of opinions known and in the possession of the employee of additional medical or other relevant experts, independent medical examiner, and second opinion examiners;

(10) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known; and

(11) a proposed Order.

(f) The parties shall receive notice of the date and time of an initial informal telephonic conference to be conducted by a Deputy Commissioner to determine whether the motion warrants an expedited or emergency hearing and to clarify the issues. During the initial informal telephonic conference each party shall be afforded an opportunity to state its position and submit documentary evidence. [Prior to the initial informal telephonic conference, the parties shall submit a brief medical chronology and procedural history of three pages or less, the relevant Form 60, Form 63, Form 21 or Commission Opinion and Award, and relevant medical information including medical records.]

(g) At or prior to the initial informal telephonic conference, the parties may consent to a review of the contested issues by electronic mail submission of only relevant medical records and opinion letters.

(h) Depositions deemed necessary by the Deputy Commissioner shall be taken on the Deputy Commissioner's order within 35 days of the date the motion is filed. Transcripts of depositions shall be submitted electronically to the Commission within 40 days of the date of the filing of the motion.

(i) At the initial informal telephonic conference, each party shall notify the Commission and the other party as to whether a second informal telephonic conference is necessary. This second informal telephonic conference does not extend the time for resolution of the Motion.

(j) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of any time allowed for response and whether informal telephonic oral argument is necessary.

(k) A party may appeal a Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 by giving notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule .0703(b) of this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 shall be considered notice of appeal to the Full Commission, provided that the letter specifies the Order from which appeal is taken. After receipt of notice of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The parties may file briefs on an abbreviated schedule when necessary for a determination of the issues. The panel chair shall also determine if oral arguments

1 are to be by telephone, in person, or waived. All correspondence, briefs, or motions related to the appeal shall be
2 addressed to the panel chair with a copy to the law clerk of the panel chair.

3 (l) The Commission will accept the filing of documents by non-electronic methods if electronic transmission is
4 unavailable to the party.

5
6 *History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a);*

7 *Eff. January 1, 2011;*

8 *Amended Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0612

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 19, who will determine this is a "well-grounded objection"? Is there a ruling on it by the Deputy Commissioner?

On line 20, who determines if the medical records are relevant? The Deputy Commissioner or the parties? I am guessing it's the parties, since it's a stipulation, but wanted to make sure. Or are you referring instead to the definition in G.S. 97-25.6? If so, you need to state that.

On line 23, there is no need to repeat "if any" – strike it.

So that I understand – the stipulation on line 24 can contain disagreements – so it is not binding on the Deputy Commissioner at the hearing?

I think it would make more sense to begin a new Paragraph (c) with the language on line 29 beginning "The costs..."

The sentence on lines 29-30 reads awkwardly, as if the health care provider's employees are going to do the selection. Why not state, "The employer shall pay for the costs of up to two post-hearing depositions of health care providers who evaluated and treated the employee, chosen by the employee."

I'd start a new Paragraph (d) with the language on line 33, "The parties may..."

On line 37, what "provision" are you talking about? The sentence directly before it? If so, you need to make that clear. And once it's submitted to the Commission for approval, how does that happen?

On Page 2, line 1, delete "Provided further, in (i)" and simply state, "Claims made pursuant to G.S. 97-29(d) or cases involving ..." (If you say "and" here, that means the claims must be both. I am assuming you mean it is one or two.) And I would make this its own Paragraph, lines 1-15.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

On Page 2, line 4, delete "at a minimum" as the Rule sets the minimum standard. If you are concerned that it will be confusing, as the Commission will consider other factors, then you need to make it clear there are other factors. You could say "such factors as..."

On Page 2, current Subparagraph (b)(1) through (8), use lowercase letters to begin the sentences. And make sure the margins are correct here. In addition, is there an extra space between "to" and "utilize" on line 10?

With the language beginning on line 16, make that its own Paragraph. On line 16, capitalize "Rule." This sentence is much too long and should be three sentences. "The term "costs"..." "The term shall include fees associated with production..." "The term shall not include costs for a party to obtain..."

In (c), how is the Commission abrogating the right of an unrepresented party to participate in the pre-trial conference contemplated in (a)?

In (d), delete or define "unreasonably" on line 24.

In (e), I take it the second sentence is an exception to the first?

Why isn't G.S. 97-26.1 in the History Note? It seems applicable here.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10A .0612 is adopted as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, as follows:

04 NCAC 10A .0612 DEPOSITIONS

~~(a) When additional testimony is necessary to the disposition of a case, a Commissioner or Deputy Commissioner may order the deposition of witnesses to be taken on or before a day certain not to exceed 60 days from the date of the ruling; provided, the time allowed may be enlarged for good cause shown. The costs of such depositions shall be borne by the defendants for those medical witnesses who examined plaintiff at defendants' expense, in those instances in which defendants are requesting the depositions, and in any other case which, in the discretion of the Commissioner or Deputy Commissioner, it is deemed appropriate.~~

~~(b) In cases where a party, or an attorney for either party, refuses to stipulate medical reports and the case must be reset or depositions ordered for testimony of medical witnesses, a Commissioner or Deputy Commissioner may in his discretion assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the stipulation.~~

~~(c) Except under unusual circumstances, all lay evidence must be offered at the initial hearing. Lay evidence can only be offered after the initial hearing by order of a Commissioner or Deputy Commissioner. The costs of obtaining lay testimony by deposition shall be borne by the party making the request unless otherwise ordered by the Commission.~~

(a) Prior to a hearing before a Deputy Commissioner, the parties shall confer to determine the methods by which medical evidence, if any, will be submitted. In doing so, absent a well-grounded objection, the parties shall stipulate to the admission of all relevant medical records, reports, and forms, as well as opinion letters from the employee's health care providers with the goal of minimizing the use of post-hearing depositions. When a Pre-Trial Agreement is required by the Commission, the parties shall certify in the Pre-Trial Agreement that the parties have conferred to determine the methods by which medical evidence, if any, will be submitted, and the parties shall state whether there is any disagreement about the stipulation of medical evidence. The parties shall state in the Pre-Trial Agreement all experts to be deposed post-hearing.

(b) When medical or other expert testimony is requested by the parties for the disposition of a case, a Deputy Commissioner or Commissioner may order expert depositions to be taken on or before a day certain not to exceed 60 days from the date of the hearing; provided, however, the time allowed may be enlarged or shortened in the interests of justice or to promote judicial economy, or where required by the Act. The costs of up to two post-hearing depositions selected by the employee of health care providers who evaluated or treated the employee shall be borne by the employer. The employer shall also bear the costs of a deposition of a second opinion doctor selected jointly by the parties or ordered by the Commission pursuant to G.S. 97-25. The employee shall designate the health care providers the employee will depose at employer's expense in the Pre-Trial Agreement. The parties may notice depositions of additional experts, and the costs thereof shall be borne by the party noticing the depositions; provided, however, if a ruling favorable to the employee is rendered and is not timely appealed by the employer, or the employer's appeal is dismissed or withdrawn, then the employer shall reimburse the employee the costs of such additional expert depositions. Notwithstanding this provision, the parties may come to a separate agreement regarding reimbursement of deposition costs, which shall be

submitted to the Commission for approval. Provided further, in (i) claims pursuant to G.S. 97-29(d) and (ii) cases involving exceptional, unique, or complex injuries or diseases, the Commission may allow additional depositions of experts to be taken at the employer's expense, when requested by the employee and when necessary to address the issues in dispute, in which case the employee shall state, and the Commission shall consider, at a minimum, the following factors when determining whether or not the employer shall bear the costs of such depositions:

- (1) The name and profession of the proposed deponent;
- (2) If the proposed deponent is a health care provider, whether the health care provider evaluated, diagnosed or treated the employee;
- (3) The issue to which the testimony is material, relevant and necessary;
- (4) The availability of alternate methods for submitting the evidence and the efforts made to utilize alternate methods;
- (5) The severity or complexity of the employee's condition;
- (6) The number and complexity of the issues in dispute;
- (7) Whether the testimony is likely to be duplicative of other evidence; and
- (8) The opposing party's position on the request.

The term "costs" as used in this rule shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for the deposition, if applicable, and shall include fees associated with the production and delivery of a transcript of the deposition to the Commission, including the court reporter's appearance fee, but shall not include costs for a party to obtain his or her own copy of the deposition transcript, or attorney's fees associated with the deposition, unless so ordered by the Commission pursuant to G.S. 97-88.1.

(c) If the claimant is unrepresented at the time of a full evidentiary hearing before a Deputy Commissioner, the Commission shall determine the best method for presenting medical evidence, if necessary, and the party responsible for bearing associated costs.

(d) If a party unreasonably refuses to stipulate to relevant medical evidence, and as a result, the case is reset or depositions are ordered for testimony of medical or expert witnesses, a Deputy Commissioner or Commissioner may assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the stipulation, pursuant to G.S. 97-88.1.

(e) All evidence and witnesses other than those tendered as an expert witness shall be offered at the hearing before the Deputy Commissioner. Non-expert evidence may be offered after the hearing before the Deputy Commissioner by order of a Deputy Commissioner or Commissioner. The costs of obtaining non-expert testimony by deposition shall be borne by the party making the request unless otherwise ordered by the Commission in the interests of justice or to promote judicial economy.

History Note: Authority G.S. 97-80(a); 97-88; 97-88.1;
Eff. June 1, 1990;
Amended Eff. April 1, 2014; June 1, 2000.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0613

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 2, lines 7 and 10, the correct way to cite the Rule is "Rule .0612 of this Section."

On line 8, you say "Order" but on line 9 it's "order." Please be consistent; to that end, I think it should be "Order" both places.

On Page 2, lines 11 and 21, "Rule" should be capitalized.

On line 13, that is not the correct way to insert a period after "applicable." See Rule 26 NCAC 02C .0108(7).

In (d), I take you mean that failure to pay by the responsible party shall result in an amount of 10 percent of the ordered fee being added to the fee granted in the Order?

I do not think you need Paragraph (f) at all. Why do you think you need it?

Why isn't G.S. 97-26.1 in the History Note? It seems applicable here. And why is 97-80(f) in it? Are you talking about sanctions to compel discovery? If so, the deposition has already been taken, so how is are you compelling the discovery here?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10A .0613 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

04 NCAC 10A .0613 EXPERT WITNESSES AND FEES

~~(a) Dismissals:~~

~~(1) — No claim filed under the Workers' Compensation Act shall be dismissed without prejudice at plaintiff's instance except upon order of the Industrial Commission and upon such terms and conditions as justice requires; provided, however, that no voluntary dismissal shall be granted after the record in a case is closed.~~

~~(2) — Unless otherwise ordered by the Industrial Commission, a plaintiff shall have one year from the date of the Order of Voluntary Dismissal to refile his claim.~~

~~(3) — Upon proper notice and an opportunity to be heard, any claim may be dismissed with or without prejudice by the Industrial Commission on its own motion or by motion of any party for failure to prosecute or to comply with these Rules or any Order of the Commission.~~

~~(b) Removals:~~

~~(1) — A claim may be removed from the hearing docket by motion of the party requesting the hearing or by the Industrial Commission upon its own motion.~~

~~(2) — Upon settlement of a case or approval of a form agreement, the parties shall submit a request for removal and/or a dismissal and proposed Order.~~

~~(3) — A removed case may be reinstated by motion of either party; provided that cases wherein the issues have materially changed since the Order of Removal or where the motion to reinstate is filed more than one year after the Order of Removal, a Form 33 Request for Hearing will be required.~~

~~(4) — When a plaintiff has not requested a hearing within two years of the filing of an Order of Removal requested by the plaintiff or necessitated by the plaintiff's conduct, and not pursued the claim, upon proper notice and an opportunity to be heard, any claim may be dismissed with prejudice by the Industrial Commission, in its discretion, on its own motion or by motion of any party.~~

(a) The parties shall file with the Deputy Commissioner or Commission within 15 days following the hearing, a list identifying all expert witnesses to be deposed and the deposition dates unless otherwise extended by the Commission in the interests of justice and judicial economy.

(b) [Within 10 days after] After the deposition of each expert, the party that noticed the deposition shall, within 10 days after receiving the expert's fee invoice, submit to the Deputy Commissioner or Commissioner, via email, a request to approve the costs related to the expert deposition. In these requests, the party shall provide to the Deputy Commissioner or Commissioner, in a cover letter along with the invoice (if available), the following:

(1) the name of the expert and the expert's practice;

(2) the expert's fax number;

(3) the expert's area of specialty and board certifications, if any;

(4) the length of the deposition;

- 1 (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with
2 parties' counsel;
3 (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an
4 exceptional, unique, or complex injury or disease;
5 (7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be
6 deposed at employer's expense; and
7 (8) the party initially responsible for payment of the deposition fee pursuant to 04 NCAC 10A .0612.

8 At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice
9 name and fax number under the "Appearances" section. The proposed order shall also reflect the party initially
10 responsible for payment of the deposition fee pursuant to 04 NCAC 10A .0612.

11 (c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this rule
12 shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for
13 the deposition, if applicable. [~~and shall include fees associated with the production and delivery of a transcript of the~~
14 ~~deposition to the Commission, including the court reporter's appearance fee, but shall not include costs for a party to~~
15 ~~obtain his or her own copy of the deposition transcript, or attorney's fees associated with the deposition, unless so~~
16 ~~ordered by the Commission pursuant to G.S. 97-88.1]~~

17 (d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an
18 amount equal to 10 percent being added to the fee ordered to be paid to the expert.

19 (e) A proposed fee for cancellation of a deposition within five days of scheduled deposition may be submitted to the
20 Deputy Commissioner for consideration and approval if in the interest of justice and judicial economy.

21 (f) This rule applies to all expert fees for depositions; provided, however, either party may elect to reimburse a retained
22 expert that did not treat or examine the employee the difference between the fee awarded by the Commission and the
23 contractual fee of the expert.

24
25 *History Note:* Authority G.S. 97-80(a); G.S. 97-80(d); 97-80(f);
26 Eff. January 1, 1990;
27 Amended Eff. April 1, 2014; January 1, 2011; June 1, 2000.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0701

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I know G.S. 97-85 uses the language "shall have been given" which is in (a), Page 2, line 16. But what does that mean?

In Paragraph (b), I take it Form 44 is not subject to S.L. 2013-294, Section 7? I further note that Paragraph (b) appears to be the language required to fulfil the requirements of Section 8(5) of the Session Law?

Just to be clear – in Paragraph (b), Page 2, line 23, "FTP" means File Transcript Protocol? And your regulated public knows that?

In Paragraph (b), line 26, that is not the proper way to change the word "acknowledgement" to "acknowledgements." Please see Rule 26 NCAC 02C .0108.

In Paragraph (c), Page 2, line 36 and Page 3, line 5, you did not publish the language "subsection (a) above." The correct language is what you did publish – "Paragraph (a) of this Rule." Change it back to the way it was when published.

In Paragraph (c), delete or define "immediately" on line 36.

In Paragraph (e), Page 3, line 15, state "The appellee's brief shall include..."

And so that I understand – In Paragraph (e), if an appellant does not file a brief, you still allow the appeal? (Page 3, lines 15-17) You won't dismiss that party's appeal?

(e), line 19 – 21, are you saying that there can only be a single extension by each party? Are you anticipating one party filing multiple or are you saying that multiple parties - up to 2 can get an extension? Do you only have 2 parties? If two appellants get 15 days each, does that mean each appellee gets nothing?

In Paragraph (f), line 22, replace "given" with "submitted"

In Paragraph (f), lines 22- 23, strike "before the Full Commission" at the beginning of the line; there's no need to say the phrase 3 times in the same sentence.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 13, 2014

In Paragraph (f), line 25, insert a comma after "Full Commission"

In Paragraph (g), state: "Case citations shall be to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter, and when possible, to the South Eastern Reporter." (Note – South Eastern Reporter is three words, not two.)

Is Paragraph (i), line 6, delete "location"

Also in Paragraph (i), typically all punctuation must go inside the quotation marks. Unless you have a compelling reason that you believe will confuse people, make the changes here.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10A .0701 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **SECTION .0700 - APPEALS**
5

6 **04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION**

7 ~~(a) A letter expressing an intent to appeal shall be considered notice of appeal to the Full Commission within the~~
8 ~~meaning of N.C. Gen. Stat. §97-85, provided that it clearly specifies the Order or Opinion and Award from which appeal~~
9 ~~is taken.~~

10 ~~(b) After receipt of notice of appeal, the Industrial Commission will supply to the appellant a Form 44 Application for~~
11 ~~Review upon which appellant must state the grounds for the appeal. The grounds must be stated with particularity,~~
12 ~~including the specific errors allegedly committed by the Commissioner or Deputy Commissioner and, when applicable,~~
13 ~~the pages in the transcript on which the alleged errors are recorded. Failure to state with particularity the grounds for~~
14 ~~appeal shall result in abandonment of such grounds, as provided in paragraph (3). Appellant's completed Form 44 and~~
15 ~~brief must be filed and served within 25 days of appellant's receipt of the transcript or receipt of notice that there will be~~
16 ~~no transcript, unless the Industrial Commission, in its discretion, waives the use of the Form 44. The time for filing a~~
17 ~~notice of appeal from the decision of a Deputy Commissioner under these rules shall be tolled until a timely motion to~~
18 ~~reconsider or to amend the decision has been ruled upon by the Deputy Commissioner.~~

19 ~~(c) Particular grounds for appeal not set forth in the application for review shall be deemed abandoned, and argument~~
20 ~~thereon shall not be heard before the Full Commission.~~

21 ~~(d) Appellant's Form 44 and brief in support of his grounds for appeal shall be filed in triplicate with the Industrial~~
22 ~~Commission, with a certificate indicating service on appellee by mail or in person, within 25 days after receipt of the~~
23 ~~transcript, or receipt of notice that there will be no transcript. Thereafter, appellee shall have 25 days from service of~~
24 ~~appellant's brief within which to file a reply brief in triplicate with the Industrial Commission, with written statement of~~
25 ~~service of copy by mail or in person on appellant. When an appellant fails to file a brief, appellee shall file his brief~~
26 ~~within 25 days after appellant's time for filing brief has expired. A party who fails to file a brief will not be allowed oral~~
27 ~~argument before the Full Commission. If both parties appeal, they shall each file an appellant's and appellee's brief on~~
28 ~~the schedule set forth herein. If the matter has not been calendared for hearing, any party may file with the Docket~~
29 ~~Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative~~
30 ~~extensions of time exceed 30 days.~~

31 ~~(e) After notice of appeal has been given to the Full Commission, any motions related to the issues before the Full~~
32 ~~Commission shall be filed in triplicate with the Full Commission, with service on the other parties.~~

33 ~~(f) No new evidence will be presented to or heard by the Full Commission unless the Commission in its discretion so~~
34 ~~permits.~~

35 ~~(g) Cases should be cited by North Carolina Reports, and, preferably, to Southeastern Reports. Counsel shall not discuss~~
36 ~~matters outside the record, assert personal opinions or relate personal experiences, or attribute unworthy acts or motives~~
37 ~~to opposing counsel.~~

1 ~~(h) The Industrial Commission or any one of the parties with permission of the Industrial Commission may waive oral~~
2 ~~argument before the Full Commission. In the event of such waiver, the Full Commission will file a decision, based on the~~
3 ~~record, assignments of error and briefs.~~

4 ~~(i) A plaintiff appealing the amount of a disfigurement award shall personally appear before the Full Commission to~~
5 ~~permit the Full Commission to view the disfigurement.~~

6 ~~(j) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit shall apply to the~~
7 ~~length of attachments. Briefs shall be prepared entirely using a 12 point font, shall be double spaced, and shall be~~
8 ~~prepared with non justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When~~
9 ~~quoting or paraphrasing testimony or other evidence in the transcript of the evidence, a parenthetic entry in the text, to~~
10 ~~include the exact page number location within the transcript of the evidence of the information being referenced shall be~~
11 ~~placed at the end of the sentence citing the information [Example: (T.p.38)]. When quoting or paraphrasing testimony or~~
12 ~~other evidence in the transcript of a deposition, a parenthetic entry in the text to include the name of the person deposed~~
13 ~~and exact page number location within the transcript of the deposition of the information being referenced shall be placed~~
14 ~~at the end of the sentence citing the information. [Example: (Smith p.15)].~~

15 (a) Application for review shall be made to the Commission within 15 days from the date when notice of the Deputy
16 Commissioner's Opinion and Award shall have been given. A letter expressing a request for review is considered an
17 application for review to the Full Commission within the meaning of G.S. 97-85, provided that the letter specifies the
18 Order or Opinion and Award from which appeal is taken.

19 (b) After receipt of a request for review, the Commission shall acknowledge the request for review by letter. The
20 Commission shall prepare the official transcript and exhibits and provide them along with a Form 44 *Application for*
21 *Review* to the parties involved in the appeal at no charge within 30 days of the acknowledgement letter. The official
22 transcript and exhibits and a Form 44 *Application for Review* shall be provided to the parties electronically, where
23 possible. In such cases, the Commission shall send an e-mail to the parties containing a link to the secure FTP site where
24 the official transcript and exhibits can be downloaded. The e-mail shall also provide instructions for the submission of
25 the parties' acknowledgement of receipt of the Form 44 *Application for Review* and the official transcript and exhibits to
26 the Commission. The Commission shall save a copy of the parties' acknowledgements [e-mails] in the file for the claim
27 to serve as record of the parties' electronic receipt of the Form 44 *Application for Review* and the official transcript and
28 exhibits. In cases where it is not possible to provide a party with the official transcript and exhibits electronically, the
29 Commission shall provide the official transcript and exhibits and a Form 44 *Application for Review* via certified U.S.
30 Mail, with return receipt requested. The Commission shall save a copy of the return receipt to serve as record of the
31 party's receipt of the official transcript and exhibits and Form 44 *Application for Review*.

32 (c) A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed with the Deputy
33 Commissioner within 15 days of receipt of notice of the award with a copy to the Docket Director. The time for filing a
34 request for review from the decision of a Deputy Commissioner under the rules in this Subchapter shall be tolled until a
35 motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner. However, if either
36 party files a letter expressing a request for review as set forth in subsection (a) above, jurisdiction shall be immediately
37 transferred to the Full Commission, and the Docket Director shall notify the Deputy Commissioner. Upon transfer of

1 jurisdiction to the Full Commission, any party who had a pending motion to reconsider or amend the decision of the
2 Deputy Commissioner may file a motion with the Chairman of the Commission requesting remand to the Deputy
3 Commissioner with whom the motion was pending. Within the Full Commission's discretion, the matter may be so
4 remanded. Upon the Deputy Commissioner's ruling on the motion to reconsider or amend the decision, either party may
5 thereafter file a letter expressing a request for review of the Deputy Commissioner's decision as set forth in subsection (a)
6 above.

7 (d) The appellant shall submit a Form 44 *Application for Review* upon which appellant shall state the grounds for the
8 review. The grounds shall be stated with particularity, including the errors allegedly committed by the Commissioner or
9 Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged errors are recorded.
10 Grounds for review not set forth in the Form 44 *Application for Review* are deemed abandoned, and argument thereon
11 shall not be heard before the Full Commission.

12 (e) The appellant shall file the Form 44 *Application for Review* and brief in support of the grounds for review with the
13 Commission with a certificate of service on the appellee within 25 days after receipt of the transcript or receipt of notice
14 that there will be no transcript. The appellee shall have 25 days from service of appellant's brief to file a responsive brief
15 with the Commission. Appellee's brief must include a certificate of service on the appellant. When an appellant fails to
16 file a brief, an appellee shall file its brief within 25 days after the appellant's time for filing the Form 44 *Application for*
17 *Review* and appellant's brief has expired. A party who fails to file a brief shall not participate in oral argument before the
18 Full Commission. If multiple parties request review, each party shall file an appellant's brief and appellee's brief on the
19 schedule set forth in this Paragraph. If the matter has not been calendared for hearing, any party may file with the Docket
20 Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative
21 extensions of time exceed 30 days.

22 (f) After a request for review has been given to the Full Commission, any motions related to the issues for review before
23 the Full Commission shall be filed with the Full Commission, with service on the other parties. Motions related to the
24 issues for review including motions for new trial, to supplement the record, including, but not limited to, documents from
25 offers of proof, or to take additional evidence, filed during the pendency of a request for review to the Full Commission
26 shall be argued before the Full Commission at the time of the hearing of the request for review, except motions related to
27 the [appellate record] official transcript and exhibits. The Full Commission, for good cause shown, may rule on such
28 motions prior to oral argument.

29 (g) Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North
30 Carolina Reporter, and when possible, to the Southeastern Reporter. If no reporter citation is available at the time a brief
31 is filed or if an unpublished decision is referenced in the brief, the party citing to the case shall attach a copy of the case
32 to its brief. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences,
33 or attribute wrongful acts or motives to opposing counsel or members of the Commission.

34 (h) Upon the request of a party or on its own motion, the Commission may waive oral argument in the interests of justice
35 or to promote judicial economy. In the event of such waiver, the Full Commission shall file an award, based on the
36 record and briefs.

1 (i) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length
2 of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-
3 justified right margins. Each page of the brief shall be numbered at the bottom of the page. When a party quotes or
4 paraphrases testimony or other evidence from the appellate record in the party's brief, the party shall include, at the end of
5 the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetical entry that designates the
6 source of the quoted or paraphrased material and the page number location within the applicable source. The party shall
7 use "T" to refer to the transcript of hearing testimony, "Ex" for exhibit, and "p" for page number. For example, if a party
8 quotes or paraphrases material located in the hearing transcript on page 11, the party shall use the following format "(T p
9 11)", and if a party quotes or paraphrases material located in an exhibit on page 12, the party shall use the following
10 format "(Ex p 12)". When a party quotes or paraphrases testimony in the transcript of a deposition in the party's brief, the
11 party shall include the last name of the deponent and the page on which such testimony is located. For example, if a party
12 quotes or paraphrases the testimony of John Smith, located on page 11 of such deposition, the party shall use the
13 following format "(Smith p 11)".

14 (j) An employee appealing the amount of a disfigurement award shall personally appear before the Full Commission to
15 permit the Full Commission to view the disfigurement.

16
17 *History Note: Authority G.S. 97-80(a); 97-85;*

18 *Eff. January 1, 1990;*

19 *Amended Eff. April 1, 2014; January 1, 2011; August 1, 2006; June 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0704

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 11, you state the stay is automatic, presumably in compliance with S.L. 2013-294, Section 8(6). But if the Court of Appeals denies rehearing or the Supreme Court denies discretionary review, what will lift the stay?

Why do you need Paragraph (b)? Don't the parties know they can apply to the Supreme Court for a writ per Rule 23 of the Rules of Appellate procedure? And that the Supreme Court can grant stay if it wishes?

I also note this while this Rule is a repetition of Rule 23(b), I don't think this is repetitive or unnecessary, given that those Rules are not contained in the NC Administrative Code.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10A .0704 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10A .0704 REMAND FROM THE APPELLATE COURTS**

5 (a) When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or
6 without a brief, to the Full Commission setting forth its position on the actions or proceedings, including evidentiary
7 hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of
8 the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission
9 decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored
10 the decision is no longer a member of the Industrial Commission. The deadline to submit the statement to the
11 Commission shall be stayed automatically upon a party filing a petition for discretionary review or rehearing to the
12 appellate courts.

13 (b) Application may be made in the first instance to the Supreme Court for a writ of supersedeas to stay the
14 execution or enforcement of a judgment, order, or other determination mandated by the Court of Appeals when a
15 notice of appeal of right or a petition for discretionary review has been or will be timely filed, or a petition for
16 review by certiorari, mandamus, or prohibition has been filed to obtain review of the decision of the Court of
17 Appeals.

18
19 *History Note: Authority G.S. 97-80(a); 97-86;*
20 *Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0801

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 11, "Rules" should be lowercase.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10A .0801 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **SECTION .0800 – RULES OF THE COMMISSION**

5
6 **04 NCAC 10A .0801 WAIVER OF RULES**

7 ~~In the interest of justice, these rules may be waived by the Industrial Commission. The rights of any unrepresented~~
8 ~~plaintiff will be given special consideration in this regard, to the end that a plaintiff without an attorney shall not be~~
9 ~~prejudiced by mere failure to strictly comply with any one of these rules.~~

10 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the
11 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
12 case pending before the Commission upon written application of a party or upon its own initiative only if the
13 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
14 waiver are:

- 15 (1) the necessity of a waiver;
16 (2) the party's responsibility for the conditions creating the need for a waiver;
17 (3) the party's prior requests for a waiver;
18 (4) the precedential value of such a waiver;
19 (5) notice to and opposition by the opposing parties; and
20 (6) the harm to the party if the waiver is not granted.

21
22 *History Note: Authority G.S. 97-80(a);*
23 *Eff. January 1, 1990;*
24 *Amended Eff. April 1, 2014.*
25

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10B .0501

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 10, "Rules" should be lowercase.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10B .0501 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **SECTION .0500 – RULES OF THE COMMISSION**

5
6 **04 NCAC 10B .0501 WAIVER OF RULES**

7 ~~In the interest of justice, these rules may be waived by a Commissioner, Deputy Commissioner, or the Full~~
8 ~~Commission.~~

9 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the
10 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
11 case pending before the Commission upon written application of a party or upon its own initiative only if the
12 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
13 waiver are:

- 14 (1) the necessity of a waiver;
15 (2) the party's responsibility for the conditions creating the need for a waiver;
16 (3) the party's prior requests for a waiver;
17 (4) the precedential value of such a waiver;
18 (5) notice to and opposition by the opposing parties; and
19 (6) the harm to the party if the waiver is not granted.

20
21 *History Note: Authority G.S. 143-291; 143-300;*
22 *Eff. January 1, 1989;*
23 *Amended Eff. April 1, 2014; May 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10C .0103

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Item (1), line 6, "Rehabilitation professional" means a medical" is new and must be underlined.

In Item (3), I know you are repeating the language of the Session Law (Section 8(7)), but we do not use the term "Subsection" in Rules. State "Item (5) of this Rule."

Do you still need the language in Item (5) from lines 26-31? Do you still have cases in the system from claims arising before June 24, 2011?

On Page 2, Item 6, line 37, "Rules" should be lowercase.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10C .0103 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, as follows:

04 NCAC 10C .0103 DEFINITIONS

As used in this Subchapter:

(a)(1) ~~RPs are~~ "Rehabilitation professional" means a medical case ~~managers and manager, a coordinators~~ coordinator of medical rehabilitation ~~services services, and/or or a vocational rehabilitation~~ professional providing vocational rehabilitation services, including ~~but not limited to, state,~~ private, or carrier based, whether on site, telephonic, or in or out of state. ~~RPs do not include direct care providers, e.g., physical therapists, occupational therapists, or speech therapists.~~ Physical therapists, occupational therapists, speech therapists, and other direct care providers are not rehabilitation professionals under the Rules in this Subchapter.

~~(b) The "parties" are the worker, the worker's attorney, the employer, the workers' compensation carrier (including claims administrator, third party administrator), and the employer or carrier's attorney(s).~~

~~(c) "Physician" means medical doctor, chiropractor, other physician, and, where the context requires, other health care providers.~~

~~(d)(2)~~ "Medical rehabilitation" ~~refers to~~ means the planning and coordination of health care ~~services.~~ services by a medical case manager or coordinator, with the goal of assisting an injured worker to be restored ~~The goal of medical rehabilitation is to assist in the restoration of injured workers as~~ nearly as possible to the workers' worker's pre-injury level of physical function. Medical case management ~~may include but is not limited to~~ includes:

(a) case assessment; assessment, including a personal interview with the injured worker;

(b) development, implementation and coordination of a care plan with health care providers providers, and with the worker worker, and his or her family;

(c) evaluation of treatment results;

(d) planning for community re-entry; re-entry and return to work work; with the employer of injury and/or and

(e) referral for further vocational rehabilitation services.

~~(e)(3)~~ ~~"Vocational Rehabilitation"~~ "Vocational rehabilitation" ~~refers to~~ means the delivery and coordination of services under an individualized written plan, with the goal of assisting the injured ~~workers worker~~ worker to return to suitable ~~employment. employment or participate in education or retraining, as defined by subsection (5) of this Rule or applicable statute.~~

~~(1) Specific vocational rehabilitation services may include, but are not limited to: vocational assessment, vocational exploration, counseling, job analysis, job modification, job development and placement, labor market survey, vocational or psychometric testing, analysis of transferable skills, work adjustment counseling, job seeking skills training, on the job training and retraining, and follow up after re-employment.~~

1 ~~(2) The vocational assessment is based on the RP's evaluation of the worker's social, medical, and~~
2 ~~vocational standing, along with other information significant to employment potential and on a~~
3 ~~face to face interview between the worker and the RP, to determine whether the worker can~~
4 ~~benefit from vocational rehabilitation services, and, if so, to identify the specific type and~~
5 ~~sequence of appropriate services. It should include an evaluation of the worker's expectations in~~
6 ~~the rehabilitation process, an evaluation of any specific requests by the worker for medical~~
7 ~~treatment or vocational training, and a statement of the RP's conclusion regarding the worker's~~
8 ~~need for rehabilitation services, benefits expected from services, and a description of the proposed~~
9 ~~rehabilitation plan.~~

10 ~~(3) Job placement activities may be commenced after completion of a vocational assessment and~~
11 ~~formulation of an individualized plan for vocational services which specifies its goals and the~~
12 ~~priority for return to work options in each case. Placement shall only be directed toward~~
13 ~~prospective employers offering the opportunity for suitable employment, as defined herein.~~

14 ~~(f)(4) "Return to work" means placement of the injured worker into suitable employment, as defined~~
15 ~~herein. by Item (5) of this Rule or applicable statute. Return to work options generally should be~~
16 ~~considered in the following priority:~~

17 ~~(1) Current job, current employer;~~

18 ~~(2) New job, current employer;~~

19 ~~(3) On the job training, current employer;~~

20 ~~(4) New job, new employer;~~

21 ~~(5) On the job training, new employer;~~

22 ~~(6) Formal vocational training to prepare worker for job with current or new employer.~~

23 ~~(7) Due to the high risk of small business failure, self employment should be considered only when its~~
24 ~~feasibility is documented with reference to worker's aptitudes and training, adequate~~
25 ~~capitalization, and market conditions.~~

26 ~~(g)(5) "Suitable employment" For claims arising before June 24, 2011, "suitable employment" means~~
27 ~~employment in the local labor market or self-employment which that is reasonably attainable and~~
28 ~~which that offers an opportunity to restore the worker as soon as possible and as nearly as~~
29 ~~practicable to pre-injury wage, while giving due consideration to the worker's qualifications (age,~~
30 ~~education, work experience, physical and mental capacities), impairment, vocational interests, and~~
31 ~~aptitudes. No one factor shall be considered solely in determining suitable employment. For~~
32 ~~claims arising on or after June 24, 2011, the statutory definition of "suitable employment," G.S.~~
33 ~~97-2(22), applies.~~

34 ~~(6) "Conditional rehabilitation professional" means a rehabilitation professional who has not met the~~
35 ~~requirements for qualified rehabilitation professionals under Paragraph (d) of Rule .0105 of this~~
36 ~~Subchapter and who desires to provide services as a rehabilitation professional in cases subject to~~
37 ~~the Rules in this Subchapter.~~

1

2 *History Note:* Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-80;
3 *Eff. January 1, 1996;*
4 *Recodified from 4 NCAC 10C .0101, Eff. April 17, 2000;*
5 *Amended Eff. April 1, 2014; June 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10C .0108

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Paragraph (b), you are saying that the worker has the right to a private examination and may assert or waive that right. Are you saying that the worker may only assert the right in writing? And that if a written assertion is made, no waiver of that right is effective unless the waiver is in writing? Does this mean the waiver must be in writing to be effective for each time, or are you saying that a blanket waiver is not inferred if an individual says to the Rehabilitation Professional "Please come with me this time."?

In Subparagraph (e)(1), line 19, do you mean "may" or "shall" here? When won't the professional assemble the records?

Also in (e)(1), lines 21-22, I think it would read better to say "worker after any requested private exam."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10C .0108 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, as follows:

04 NCAC 10C .0108 INTERACTION WITH PHYSICIANS

(a) At the initial visit with a physician the RP-rehabilitation professional shall provide ~~professional~~ identification in the form of a company identification or business card and ~~shall~~ explain the RP's rehabilitation professional's role in the case.

(b) In all cases, the RP-rehabilitation professional shall advise the worker that ~~he or she~~ the worker has the right to a private examination by the ~~medical health care~~ provider outside of the presence of the RP-rehabilitation professional. If the worker prefers, he or she may request that the RP-rehabilitation professional accompany him or her during the examination. However, if the worker or the worker's attorney notifies the RP-rehabilitation professional in writing that the worker desires a private examination, no subsequent waiver of that right shall be effective unless the waiver is ~~revoked-made~~ in writing by the worker or, if represented, by the worker's attorney.

(c) If the RP-rehabilitation professional ~~wishes~~ needs to have a an in-person conference with the physician following an examination, the RP-rehabilitation professional ~~should~~ shall reserve with the physician sufficient appointment time for ~~a-the~~ conference. The worker ~~must~~ shall be offered the opportunity to attend ~~this the~~ conference with the physician. If the worker or the physician does not consent to a joint conference, or if in the physician's opinion it is medically contraindicated for the worker to participate in the conference, the RP-rehabilitation professional ~~will~~ shall note this in his or her report, ~~and may in such case~~ communicate directly with the physician, and shall report the substance of the communication.

(d) When the RP-rehabilitation professional determines that it is necessary to communicate with a physician other than at a joint meeting, the RP-rehabilitation professional shall first notify the injured worker, or ~~his/her~~ his or her attorney if represented, of the RP's rehabilitation professional's intent to communicate and the reasons therefore. The RP-rehabilitation professional ~~need is~~ not required to obtain the injured worker's or his or her attorney's prior consent ~~for the following types of communication- if:~~

- (1) The communication is limited to scheduling issues or requests for time-sensitive medical records;
- (2) A medical emergency is involved;
- (3) The injured worker's health or medical treatment would either be adversely affected by a delay or benefited by immediate action;
- (4) The communication is limited to advising the physician of the employer or carrier approval for recommended testing or treatment;
- (5) The injured worker or attorney has consented to ~~such the communications~~ communications; ~~through a valid, current authorization;~~
- (6) The communication is initiated by the physician; or
- (7) The injured worker failed to show up for a scheduled appointment or arrived at a time other than the scheduled appointment time.

1 ~~Whenever an RP~~ When a rehabilitation professional communicates with a physician without the prior consent or
2 presence of the injured worker, the ~~RP~~ rehabilitation professional must promptly document the reasons for and the
3 substance of the communication and promptly report ~~such~~ the reasons and substance to the injured worker or his or
4 her attorney, if represented, pursuant to Rule ~~VI~~ .0106 of this Subchapter.

5 ~~(e) The RP may assist in scheduling second opinions requested by the treating physician, as well as supporting~~
6 ~~treatment. In such case, the worker shall receive at least 10 calendar days notice of an appointment for a second~~
7 ~~opinion unless otherwise agreed by the parties or required by statute.~~

8 ~~(f) The RP may assist in obtaining from the treating physician an opinion as to the degree of permanent partial~~
9 ~~impairment retained by the worker at maximum medical improvement. The decision to obtain a second physician's~~
10 ~~opinion on the degree of impairment is not within the practice of rehabilitation. However, if requested by the party~~
11 ~~who desires a second opinion, the RP may assemble information, schedule, coordinate, and, with the worker's~~
12 ~~consent, attend the appointment with that physician.~~

13 ~~(g) If a party requests a second opinion or an independent medical examination, the RP's involvement is limited to~~
14 ~~assembling and forwarding medical records and information, and scheduling, coordinating, and, with the worker's~~
15 ~~consent, attending the appointment with that physician.~~

16 (e) The following requirements apply to interactions regarding impairment ratings, independent medical
17 examinations, second opinions or consults:

18 (1) When a party or health care provider requests a consult, second opinion, or independent medical
19 examination that is authorized or ordered, the rehabilitation professional may assemble and
20 forward medical records and information, schedule and coordinate an appointment, and, if the
21 worker consents, have a joint meeting with the health care provider and the worker after a private
22 exam, if requested.

23 (2) When any such exam is requested by the carrier, the worker shall receive at least 10 calendar days'
24 notice of the appointment unless the parties agree otherwise or unless otherwise required by
25 statute.

26 ~~(h)(f)~~ The ~~RP~~ rehabilitation professional shall simultaneously send ~~copies~~ to the parties copies of all written
27 communications ~~to with medical health care providers, providers~~ and shall accurately and completely record and
28 report all oral communications.

29
30 *History Note: Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80;*

31 *Eff. January 1, 1996;*

32 *Amended Eff. April 1, 2014; June 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10C .0109

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Subparagraph (c)(6), state "to prepare the worker for a job..."

Fix the margins for Subparagraphs (d)(1) through (5).

I take it the purpose of Paragraph (d) is to ensure that the requirement of G.S. 97-32.2(a) is met?

(a) In a compensable claim, the employer may engage vocational rehabilitation services at any point during a claim, regardless of whether the employee has reached maximum medical improvement to include, among other services, a one-time assessment of the employee's vocational potential, except vocational rehabilitation services may not be required if the employee is receiving benefits pursuant to G.S. 97-29(c) or G.S. 97-29(d). If the employee (i) has not returned to work or (ii) has returned to work earning less than seventy-five percent (75%) of the employee's average weekly wages and is receiving benefits pursuant to G.S. 97-30, the employee may request vocational rehabilitation services, including education and retraining in the North Carolina community college or university systems so long as the education and retraining are reasonably likely to substantially increase the employee's wage-earning capacity following completion of the education or retraining program. Provided, however, the seventy-five percent (75%) threshold is for the purposes of qualification for vocational rehabilitation benefits only and shall not impact a decision as to whether a job is suitable per G.S. 97-2(22). The expense of vocational rehabilitation services provided pursuant to this section shall be borne by the employer in the same manner as medical compensation.

In Paragraph (f), just get rid of ~~[Rehabilitation Professional]~~ on line 1. That is not original language to the Rule. On line 2 of the Paragraph, there was originally a period after "herein" and you need to add that.

So that I understand – what do you mean by "when job availability is critical" on line 9 of Page 2? Critical to the employee or the potential employer or both?

In Paragraph (g), line 10, I would state "has given prior approval" rather than "pre-approved."

In (h), it appears you are incorporating this document by reference. If so, you need to comply with G.S. 150B-21.6 and state where it can be found and at what cost. If the document is available online for free, you may say it can be accessed at [web address] at no cost.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

In Paragraph (i), line 17, you cannot make "follow-up" lowercase like that. You must strike the entire word and then write the new word.

Why is 97-25.4 in the History Note? As I read it, that applies to medical rehabilitation, not vocational rehabilitation.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10C .0109 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

04 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK

(a) When performing the vocational assessment and formulating and drafting the individualized written rehabilitation plan for the employee required by G.S. 97-32.2(c), the vocational rehabilitation professional shall follow G.S. 97-32.2.

(b) Job placement activities may not be commenced until after a vocational assessment and an individualized written rehabilitation plan for vocational rehabilitation services specifying the goals and the priority for return-to-work options have been completed in the case in accordance with G.S. 97-32.2. Job placement activities shall be directed only toward prospective employers offering the opportunity for suitable employment, as defined by Item (5) of Rule .0103 of this Subchapter or by applicable statute.

(c) Return-to-work options shall be considered in the following order of priority:

(1) current job, current employer;

(2) new job, current employer;

(3) on-the-job training, current employer;

(4) new job, new employer;

(5) on-the-job training, new employer;

(6) formal education or vocational training to prepare worker for job with current or new employer;
and

(7) self-employment, only when its feasibility is documented with reference to the employee's aptitudes and training, adequate capitalization, and market conditions.

(d) When an employee requests retraining or education as permitted in G.S. 97-32.2(a), the vocational rehabilitation professional shall provide a written assessment of the employee's request that includes an evaluation of:

(1) the retraining or education requested;

(2) the availability, location, cost, and identity of providers of the requested retraining or education;

(3) the likely duration until completion of the requested retraining or education and the likely class schedules, class attendance requirements, and out-of-class time required for homework and study;

(4) the current or projected availability of employment upon completion; and

(5) the anticipated pay range for employment upon completion.

~~(a)(c) The RP shall obtain from the medical provider work restrictions which fairly address the demands of any proposed employment. If ordered by a physician, the RP should obtain a Functional Capacity Evaluation (FCE) or Physical Capacity Evaluation (PCE). Any FCE or PCE obtained should measure the worker's capacities and impairments. The rehabilitation professional shall obtain work restrictions from the health care provider that address the demands of any proposed employment. If ordered by a physician, the rehabilitation professional shall schedule an appointment with a third party provider to evaluate an injured worker's functional capacity, physical capacity, or impairments to work.~~

1 ~~(b)(f)~~ The ~~RP [Rehabilitation Professional]~~ rehabilitation professional shall refer the worker only to opportunities
2 for suitable employment, as defined ~~herein by Item (5) of Rule .0103 of this Subchapter or by applicable statute.~~

3 ~~(e)(g)~~ If the ~~RP, rehabilitation professional~~ intends to utilize written or videotaped job descriptions in the return-to-
4 work process, the ~~RP, rehabilitation professional~~ shall provide a copy of the description to all parties for review
5 before the job description is provided to the doctor. The worker or the worker's attorney shall have seven business
6 days from ~~the mailing of the description, description~~ to notify the ~~RP rehabilitation professional~~, all parties, and the
7 physician of any objections or amendments ~~to the job description thereto~~. The job description and the objections or
8 amendments, if any, shall be submitted to the physician simultaneously. This process ~~may~~ shall be expedited ~~on~~
9 ~~occasions~~ when job availability is critical. This waiting period does not apply if the worker or the worker's attorney
10 has pre-approved the job description.

11 ~~(d)(h)~~ In preparing written job descriptions, the ~~RP rehabilitation professional~~ shall utilize standards
12 including ~~recognized standards which may include but not be limited to the Dictionary of Occupational~~
13 ~~Titles and/or and the Handbook for Analyzing Jobs published by the U.S. United States Department of Labor Labor,~~
14 ~~which are recognized as national standard references for use in vocational rehabilitation.~~

15 ~~(e)~~ ~~In identifying proposed employment for the injured worker, the RP should consider the worker's transportation~~
16 ~~requirements.~~

17 ~~(f)(i)~~ The rehabilitation professional may conduct follow-up after job placement ~~may be carried out~~ to verify the
18 appropriateness of the job placement.

19 ~~(g)(j)~~ The ~~RP, rehabilitation professional~~ shall not initiate or continue placement activities ~~which~~ that do not appear
20 reasonably likely to result in placement of the injured worker in suitable employment. The ~~RP, rehabilitation~~
21 professional shall report to the parties when efforts to place the worker in suitable employment do not appear
22 reasonably likely to result in placement of the injured worker in suitable employment.

23
24 *History Note:* Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-2(22);

25 *Eff. January 1, 1996;*

26 *Amended Eff. April 1, 2014; June 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10C .0201

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 8, "Rules" should be lowercase.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10C .0201 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **SECTION .0200 - RULES OF THE COMMISSION**

5
6 **4 NCAC 10C .0201 WAIVER OF RULES**

7 In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the
8 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
9 case pending before the Commission upon written application of a party or upon its own initiative only if the
10 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
11 waiver are:

- 12 (1) the necessity of a waiver;
13 (2) the party's responsibility for the conditions creating the need for a waiver;
14 (3) the party's prior requests for a waiver;
15 (4) the precedential value of such a waiver;
16 (5) notice to and opposition by the opposing parties; and
17 (6) the harm to the party if the waiver is not granted.

18
19 *History Note: Authority G.S. 97-25.4; 97-80;*
20 *Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10D .0110

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 7, "Rules" should be lowercase.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10D .0110 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10D .0110 WAIVER OF RULES**

5 ~~For good cause, and in its discretion, subject to statutory requirements, the Commission may waive adherence to any~~
6 ~~of these Rules.~~ In the interests of justice or to promote judicial economy, the Commission may, except as otherwise
7 provided by the Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this
8 Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative
9 only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to
10 grant the waiver are:

- 11 (1) the necessity of a waiver;
12 (2) the party's responsibility for the conditions creating the need for a waiver;
13 (3) the party's prior requests for a waiver;
14 (4) the precedential value of such a waiver;
15 (5) notice to and opposition by the opposing parties; and
16 (6) the harm to the party if the waiver is not granted.

17
18 *History Note:* Authority G.S. 97-25.2; 97-80(a);
19 Eff. January 1, 1996;
20 Amended Eff. April 1, 2014.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10E .0103

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please confirm this Rule is a product of minutes that is being created under S.L. 2013-294, Section 8, Item 12.

In (a), line 7, is the term "particular" necessary?

Also on line 7, you say the attorney "may" file a motion. I take it the "may" is because the in-state attorney may file it on line 11? Because as you know, the statute clearly requires a motion be filed to do this.

And of course, your rule is not intended in any way to alter the requirement that the motion be signed by the out-of-state attorney as required by G.S. 84-4.1, correct?

In (b)(1), I don't need "pertinent" is necessary. And why isn't this parallel language for (b)(2) and (3), "If the motion filed involves a claim that is set..."

I take it in (b)(2), your regulated public knows what a "form application" is?

In (c), I take it you mean "A proposed Order granting pro hac vice admission" ?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

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: North Carolina Industrial Commission

RULE CITATION: Rule 04 NCAC 10E .0103

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:

This Rule is intended to govern pro hac vice admission to out-of-state attorneys to the Industrial Commission. This is explicitly allowed under G.S. 84-4.1.

Staff does not have a problem with the existing language that would raise to the level of recommending an objection. Instead, staff is concerned because the Rule states how the motion may be filed, but it does not say what happens after that is done. G.S. 84-4.1 states that filing a motion in compliance with the statute does not deprive the court the power to accept or reject the application. Will the Industrial Commission grant admission to everyone who complies with the Rule? If so, that needs to be stated in the Rule, along with some indication on how the attorney will be notified. The Industrial Commission may have tried to address this in Paragraph (c), which requires a proposed Order be filed along with the motion. However, it does not say what will happen once the motion and Order are filed. If the Commission is going to rule on these motions to determine whether to allow admission or not, then that needs to be included in the Rule.

Amanda J. Reeder
Commission Counsel

§ 84-4.1. Limited practice of out-of-state attorneys.

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of and in good standing in that state, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the proceeding. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

- (1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state.
- (2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.
- (3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until its final determination, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.
- (4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.
- (5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State, has agreed to be responsible for filing a registration statement with the North Carolina State Bar, and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.
- (6) A statement accurately disclosing a record of all that attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.
- (7) A fee in the amount of two hundred twenty-five dollars (\$225.00), of which two hundred dollars (\$200.00) shall be remitted to the State Treasurer for support of the General Court of Justice and twenty-five dollars (\$25.00) shall be transmitted to the North Carolina State Bar to regulate the practice of out-of-state attorneys as provided in this section.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application. (1967, c. 1199, s. 1; 1971, c. 550, s. 1; 1975, c. 582, ss.

*Amanda J. Reeder
Commission Counsel*

1, 2; 1977, c. 430; 1985 (Reg. Sess., 1986), c. 1022, s. 8; 1991, c. 210, s. 2; 1995, c. 431, s. 5; 2003-116, s. 1; 2004-186, s. 4.2; 2005-396, s. 1; 2007-200, s. 4; 2007-323, s. 30.8(k).)

1 Rule 04 NCAC 10E .0103 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **04 NCAC 10E .0103 ADMISSION OF OUT-OF STATE ATTORNEYS TO APPEAR BEFORE THE**
5 **COMMISSION**

6 (a) Attorneys residing in and licensed to practice law in another state who seek to be admitted to practice before the
7 Commission to represent a client in a particular claim pursuant to N.C. Gen. Stat. § 84-4.1 may file a motion with
8 the Commission that complies with the requirements of N.C. Gen. Stat. § 84-4.1. ~~If the *pro hac vice* motion is filed~~
9 ~~in a case involving a stipulated Opinion and Award regarding a death claim, the motion shall be filed with the Chief~~
10 ~~Deputy Commissioner.~~ The North Carolina attorney with whom the out-of-state attorney associates pursuant to
11 N.C. Gen. Stat. § 84-4.1(5) may also file the motion.

12 (b) The motion shall be filed with the Executive Secretary of the Commission except under the following
13 circumstances:

14 (1) If the pertinent claim is set for hearing before or pending decision by a Deputy Commissioner or
15 the Full Commission, the motion shall be filed with the Deputy Commissioner or chair of the Full
16 Commission panel, respectively.

17 (2) If the motion is filed in a case involving a form application regarding a death claim, the motion
18 shall be filed with the Director of Claims Administration.

19 (3) If the motion is filed in a case involving a stipulated Opinion and Award regarding a death claim,
20 the motion shall be filed with the Chief Deputy Commissioner.

21 (c) A proposed Order that includes the facsimile numbers for all counsel of record shall be provided with the
22 motion.

23 (d) Following the payment of the fees to the North Carolina State Bar and General Court of Justice as required by
24 N.C. Gen. Stat. § 84-4.1, the out-of-state attorney or the associated North Carolina attorney shall file a statement
25 with the Executive Secretary documenting payment of said fees and the submission of any *pro hac vice* admission
26 registration statement required by the North Carolina State Bar.

27
28 *History Note: Authority G.S. 84-4.1; 97-80(a);*
29 *Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10E .0104

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please confirm this Rule is a product of minutes that is being created under S.L. 2013-294, Section 8, Item 12.

I know you are essentially reciting Rule 26 of the General Rules of Practice for the Superior and District Courts here. However, the language in (a), lines 5 through 8 are unnecessary. Delete them. Begin the Paragraph, "Any attorney may designate one or more secure leave periods each year as provided in this Rule."

I would phrase (b) "... shall not exceed an aggregate of three weeks." but that is up to you.

In (c), line 14, use the language that you published and state "Paragraph (e)."

In (c), when is the letter "appropriate"? When the individual has met the requirements of (e)? If so, then state "shall review the request and, if the individual complies with Paragraph (e), issue..."

And is the Chair issuing a letter, not an Order, on line 14?

On line 15, end the sentence after "period." Then begin "The attorney shall..."

In (d)(1) through (4), replace the commas with semicolons.

In (d)(4), line 22, "a" should be lower case.

In (e)(1), line 29, replace the comma with a semicolon.

In (e), line 32, by "automatically" do you mean there will be no review? Also, will the denial be by letter, not an Order?

In (e), line 36, "Chair of the Panel" is capitalized in Rule 10A .0609A. Should be it capitalized here?

In (f), delete "pertinent" on line 5.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Why do you need Paragraph (h)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

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: North Carolina Industrial Commission

RULE CITATION: Rule 04 NCAC 10E .0104

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:

This Rule is intended to govern the granting of secured leave to attorneys.

In Paragraph (a), the Industrial Commission states that the attorneys may "secure" the leave, which would seem to say that the attorneys can just declare it and take it. However, the Paragraphs (c), (d) and (e) of the Rule refers to making a request and the Commission acting upon that request by issuing a letter "if appropriate" to allow the leave. Further, Paragraph (e) states that an untimely request will be "automatically denied," so it appears there is some review process for the requests. It is not clear from the Rule whether the Industrial Commission will allow the secured leave to every attorney who asks for it and complies with Paragraphs (d) and (e). That may be the intent, but it not stated in the Rule. Therefore, staff believes it is unclear as written.

Staff notes that the Industrial Commission apparently used Rule 26 of the General Rules of Practice for Superior and District Courts (attached) as the lodestar for writing this Rule. Staff believes that Rule is clearer that once designated by the attorney, the Court will only act upon it if there is a dispute as to whether it was properly designated.

Please note, staff does not believe that using the language of Rule 26 of the General Rules of Practice for Superior and District Courts makes the Rule "unnecessary" under G.S. 150B-21.9, nor is it repetitive of other established standards, since those Rules are not in the NC

*Amanda J. Reeder
Commission Counsel*

Administrative Code. Staff assumes this Rule was promulgated and placed in the Chapter governing the Industrial Commission for the ease of the attorneys who generally practice in this forum. Staff further notes that the Office of North Carolina Appellate Reporter's website contains the following notice:

General Rules of Practice for Superior and District Courts

The GENERAL RULES OF PRACTICE FOR THE SUPERIOR AND DISTRICT COURTS SUPPLEMENTAL TO THE RULES OF CIVIL PROCEDURE was promulgated by the North Carolina Supreme Court effective 01 July 1970 and **can be found at 276 N.C. 735.**

Since 1970, the Court has promulgated many amendments to this set of rules, though no official recompilation has been published. Current unofficial compilations of this set of rules can be found in electronic format licensed by private vendors. A electronic compilation of this set of rules cannot be found on this site.

[<http://www.aoc.state.nc.us/www/public/html/ARGenRules.asp>]

Staff believes the Industrial Commission should be allowed to set forth its own rule for designating secured leave, even if it is similar to the General Rules of Practice.

*Amanda J. Reeder
Commission Counsel*

Order Adopting Amendment to General Rules of Practice for the Superior and District Courts

Pursuant to the authority of Article IV of the Constitution of North Carolina and N.C.G.S. §7A-34, the General Rules of Practice for the Superior and District Courts are amended by adding a new Rule 26 to read:

"26. Secure Leave Periods for Attorneys

(A) Purpose, Authorization. In order to secure for the parties to actions and proceedings pending in the Superior and District Courts, and to the public at large, the heightened level of professionalism that an attorney is able to provide when the attorney enjoys periods of time that are free from the urgent demands of professional responsibility and to enhance the overall quality of the attorney's personal and family life, any attorney may from time to time designate and enjoy one or more secure leave periods each year as provided in this Rule.

(B) Length, Number. A secure leave period shall consist of one or more complete calendar weeks. During any calendar year, an attorney's secure leave periods pursuant to this Rule and to Rule 33A of the Rules of Appellate Procedure shall not exceed, in the aggregate, three calendar weeks.

(C) Designation, Effect. To designate a secure leave period an attorney shall file a written designation containing the information required by subsection (D), with the official specified in subsection (E), and within the time provided in subsection (F). Upon such filing, the secure leave period so designated shall be deemed allowed without further action of the court, and the attorney shall not be required to appear at any trial, hearing, in-court or out-of-court deposition, or other proceeding in the Superior or District Courts during that secure leave period.

(D) Content of Designation. The designation shall contain the following information: (1) the attorney's name, address, telephone number and state bar number, (2) the date of the Monday on which the secure leave period is to begin and of the Friday on which it is to end, (3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule and to Rule 33A of the Rules of Appellate Procedure, (4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering or interfering with the timely disposition of any matter in any pending action or proceeding, and (5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, peremptorily set or noticed for trial, hearing, deposition or other proceeding during the designated secure leave period.

(E) Where to File Designation. The designation shall be filed as follows: (1) if the attorney has entered an appearance in any criminal action, in the office of the District Attorney for each prosecutorial district in which any such case or proceeding is pending; (2) if the attorney has entered an appearance in any civil action, either (a) in the office of the trial court administrator

*Amanda J. Reeder
Commission Counsel*

for each superior court district and district court district in which any such case is pending or, (b) if there is no trial court administrator for a superior court district, in the office of the Senior Resident Superior Court Judge for that district, (c) if there is no trial court administrator for a district court district, in the office of the Chief District Court Judge for that district; (3) if the attorney has entered an appearance in any special proceeding or estate proceeding, in the office of the Clerk of Superior Court of the county in which any such matter is pending; (4) if the attorney has entered an appearance in any juvenile proceeding, with the juvenile case calendaring clerk in the office of the Clerk of Superior Court of the county in which any such proceeding is pending.

(F) When to File Designation. To be effective, the designation shall be filed: (1) no later than ninety (90) days before the beginning of the secure leave period, and (2) before any trial, hearing, deposition or other matter has been regularly scheduled, peremptorily set or noticed for a time during the designated secure leave period.

(G) Procedure When Court Proceeding Scheduled Despite Designation. If, after a designation of a secure leave period has been filed pursuant to this rule, any trial, hearing, in-court deposition or other in-court proceeding is scheduled or peremptorily set for a time during the secure leave period, the attorney shall file with the official by whom the matter was calendared or set, and serve on all parties, a copy of the designation with a certificate of service attached. Any party may, within ten days after service of the copy of the designation and certificate of service, file a written objection with that official and serve a copy on all parties. The only ground for objection shall be that the designation was not in fact filed in compliance with this Rule. If no objection is filed, that official shall reschedule the matter for a time that is not within the attorney's secure leave period. If an objection is filed, the court shall determine whether the designation was filed in compliance with this Rule. If the court finds that the designation was filed as provided in this Rule, it shall reschedule the matter for a time that is not within the attorney's secure leave period. If the court finds the designation was not so filed, it shall enter any scheduling, calendaring or other order that it finds to be in the interests of justice.

(H) Procedure When Deposition Scheduled Despite Designation. If, after a designation of a secure leave period has been filed pursuant to this Rule, any deposition is noticed for a time during the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the designation with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period. Any dispute over whether the secure leave period was properly designated pursuant to this Rule shall be resolved pursuant to the portions of the Rules of Civil Procedure, G.S. 1A-1, that govern discovery.

(I) Nothing in this Rule shall limit the inherent power of the Superior and District Courts to reschedule a case to allow an attorney to enjoy a leave during a period that has not been designated pursuant to this Rule, but there shall be no entitlement to any such leave.

Adopted by the Court in Conference this 6th day of May, 1999, on the recommendation of the Chief Justice's Commission on Professionalism. This amendment is effective January 1, 2000, and applies to all actions and proceedings pending in the Superior and District Courts on and after that date. This amendment shall be promulgated by publication in the Advance Sheets of

Amanda J. Reeder
Commission Counsel

the Supreme Court and Court of Appeals and by distribution by mail to each superior and district court judge, district attorney, clerk of superior court, and the North Carolina State Bar.

Wainwright, J.

For the Court

Amanda J. Reeder
Commission Counsel

Rule 04 NCAC 10E .0104 is adopted as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, as follows:

04 NCAC 10E .0104 SECURE LEAVE PERIODS FOR ATTORNEYS

(a) In order to secure for the parties to actions and proceedings pending before the Industrial Commission, and to the public at large, the heightened level of professionalism that an attorney is able to provide when the attorney enjoys periods of time that are free from the urgent demands of professional responsibility and to enhance the overall quality of the attorney's personal and family life, any attorney may from time to time designate and enjoy one or more secure leave periods each year as provided in this Rule.

(b) During any calendar year, an attorney's secure leave periods pursuant to this Rule shall not exceed, in the aggregate, three calendar weeks.

(c) To request a secure leave period an attorney shall file a written request, by letter or motion, containing the information required by subsection (d) of this Rule with the Office of the Chair within the time provided in subsection (e). Upon such filing, the Chair shall review the request and, if appropriate, issue a letter allowing the requested secure leave period, and the attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding before the Commission during that secure leave period.

(d) The request shall contain the following information:

(1) the attorney's name, address, telephone number and state bar number,

(2) the date(s) for which secure leave is being requested,

(3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule,

(4) A statement that the secure leave period is not being designated for the purpose of delaying, hindering or interfering with the timely disposition of any matter in any pending action or proceeding, and

(5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, tentatively set, or noticed for trial, hearing, deposition or other proceeding during the designated secure leave period.

(e) To be allowed, the request shall be filed:

(1) no later than ninety (90) days before the beginning of the secure leave period, and

(2) before any trial, hearing, deposition or other matter has been regularly scheduled, peremptorily set or noticed for a time during the designated secure leave period.

An untimely request will be automatically denied by letter. In the event that a party has been denied secure leave because the request was not timely filed and there are extraordinary circumstances, the attorney may file a motion requesting an exception. If the case has been scheduled for hearing before a Deputy Commissioner, the motion shall be addressed to the Deputy Commissioner. If the matter is scheduled for hearing before the Full Commission, the motion shall be addressed to the chair of the panel before which the hearing will be held. In all other cases, the motion should be directed to the Office of the Chair.

1 (f) If, after a secure leave period has been allowed pursuant to this Rule, any trial, hearing, deposition, or other
2 proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the
3 Deputy Commissioner or chair of the Full Commission panel before which the matter was calendared or set, and
4 serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon
5 receipt, the pertinent proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.

6 (g) If, after a secure leave period has been allowed pursuant to this Rule, any deposition is noticed for a time during
7 the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing
8 the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time
9 that is not within the attorney's secure leave period.

10 (h) Nothing in this Rule shall limit the inherent power of the Commission to reschedule a case to allow an attorney
11 to enjoy a leave during a period that has not been allowed pursuant to this Rule, but there shall be no entitlement to
12 any such leave.

13
14 *History Note: Authority G.S. 97-80(a);*
15 *Eff. April 1, 2014.*

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: North Carolina Industrial Commission

RULE CITATION: Rules 04 NCAC 10E .0201 -.0203

RECOMMENDED ACTION:

- X 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:

These Rules govern fees by the Industrial Commission. Staff is aware that in 2012, there was considerable concern about the fees put in these Rules. The Commission approved versions of these Rules in October 2012. Staff notes that the fees in Rule .0203 are higher than the ones approved by the Rules Review Commission in 2012, and the Rule includes a new fee for mediator reports. (A copy of that approved Rule is attached.)

These fees may not be well received by the regulated public; however, staff believes that the Industrial Commission has the authority to set fees within the limits of the law, specifically Chapters 97 and 143, Article 31.

Attached are the laws cited by the Industrial Commission in the History Notes of the Rules for your reference. Staff specifically notes G.S. 97-73, 143-291.1 and 143-292.2.

*Amanda J. Reeder
Commission Counsel*

§ 97-17. Settlements allowed in accordance with Article.

(a) This article does not prevent settlements made by and between the employee and employer so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this Article. A copy of a settlement agreement shall be filed by the employer with and approved by the Commission. No party to any agreement for compensation approved by the Commission shall deny the truth of the matters contained in the settlement agreement, unless the party is able to show to the satisfaction of the Commission that there has been error due to fraud, misrepresentation, undue influence or mutual mistake, in which event the Commission may set aside the agreement. Except as provided in this subsection, the decision of the Commission to approve a settlement agreement is final and is not subject to review or collateral attack.

(b) The Commission shall not approve a settlement agreement under this section, unless all of the following conditions are satisfied:

(1) The settlement agreement is deemed by the Commission to be fair and just, and that the interests of all of the parties and of any person, including a health benefit plan that paid medical expenses of the employee have been considered.

(2) The settlement agreement contains a list of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or carrier disputes, and a list of medical expenses, if any, that will be paid by the employer under the settlement agreement.

(3) The settlement agreement contains a finding that the positions of all of the parties to the agreement are reasonable as to the payment of medical expenses.

It is not necessary, however, to satisfy the condition in subdivision (2) of this subsection when in the settlement agreement the employer agrees to pay all medical expenses of the employee related to the injury to the date of the settlement agreement.

(c) In determining whether the positions of all of the parties to the agreement are reasonable as to the payment of medical expenses under subdivision (3) of subsection (b) of this section, the Commission shall consider all of the following:

(1) Whether the employer admitted or reasonably denied the employee's claim for compensation.

(2) The amount of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or carrier disputes.

(3) The need for finality in the litigation.

(d) Nothing in this section shall be construed to limit the application of G.S. 44-49 and G.S. 44-50 to funds in compensation for settlement under this section.

(e) Nothing in this section prevents the parties from reaching a separate contemporaneous agreement resolving issues not covered by this Article. (1929, c. 120, s. 18; 1963, c. 436; 2001-216, s. 2; 2001-487, s. 102(b); 2005-448, s. 3; 2011-287, s. 4.)

§ 97-73. Fees.

(a) Claims. - The Industrial Commission may establish by rule a schedule of fees for examinations conducted, reports made, documents filed, and agreements reviewed under this Article. The fees shall be collected in accordance with rules adopted by the Industrial Commission.

(b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003.

(d) Safety. - A fee in the amount set by the Industrial Commission is imposed on an employer for whom the Industrial Commission provides an educational training program on how to prevent or reduce accidents or injuries that result in workers' compensation claims or a person for whom the Industrial Commission provides other educational services. The fees are departmental receipts. (1935, c. 123; 1955, c. 525, s. 8; 1991, c. 481, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 2; 1997-443, s. 11A.39; 2003-284, s. 10.33(d); 2005-276, s. 45.1(a); 2009-451, s. 14.16(a).)

§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to take testimony; meetings; hearings.

(a) The Commission shall be provided with adequate offices in which the records shall be kept and its official business transacted during regular business hours; it shall also be provided with necessary office furniture, stationery, and other supplies.

(b) **(Effective until July 1, 2015)** The Commission may appoint deputies who shall have the same power as members of the Commission pursuant to G.S. 97-80 and the same power to take evidence, and enter orders, opinions, and awards based thereon as is possessed by the members of the Commission. The deputies shall be subject to the State Personnel System.

(b) **(Effective July 1, 2015)** The Commission may appoint deputies who shall have the same power as members of the Commission pursuant to G.S. 97-80 and the same power to take evidence, and enter orders, opinions, and awards based thereon as is possessed by the members of the Commission. Deputies appointed pursuant to this subsection shall not be considered hearing officers within the meaning of G.S. 126-5(d)(7).

(c) The Commission or any member thereof may hold sessions at any place within the State as may be deemed necessary by the Commission.

*Amanda J. Reeder
Commission Counsel*

(d) Hearings before the Commission shall be open to the public and shall be stenographically reported, and the Commission is authorized to contract for the reporting of such hearings. The Commission shall by regulation provide for the preparation of a record of the hearings and other proceedings. Notwithstanding the provisions of this subsection, informal hearings conducted pursuant to the provisions of G.S. 97-18.1, whether by telephone or in person, shall not be open to the public nor stenographically reported unless the Commission orders otherwise.

(e) The Commission, or any member thereof, or any deputy is authorized by appropriate order, to make additional parties plaintiff or defendant in any proceeding pending before the Commission when it is made to appear that such new party is either a necessary party or a proper party to a final determination of the proceeding.

(f) The Commission shall create an ombudsman program to assist unrepresented claimants, employers, and other parties, to enable them to protect their rights under this Article. In addition to other duties assigned by the Commission, the ombudsman shall meet with, or otherwise provide information to, injured employees, investigate complaints, and communicate with employers' insurance carriers and physicians at the request of the claimant. Assistance provided under this subsection shall not include representing the claimant in a compensation hearing.

(g) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes, for administrative motions, including practices and procedures for carrying out the provisions of this Article. (1929, c. 120, s. 53; 1931, c. 274, s. 10; 1951, c. 1059, s. 7; 1955, c. 1026, s. 11; 1971, c. 527, s. 2; c. 1147, s. 2; 1981 (Reg. Sess., 1982), c. 1243, s. 1; 1993 (Reg. Sess., 1994), c. 679, s. 5.2; 2013-294, s. 5; 2013-413, s. 60(b).)

§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.

(a) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes and not inconsistent with this Article, for carrying out the provisions of this Article.

The Commission shall adopt rules establishing processes and procedure to be used under this Article.

Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be.

(b) The Commission or any member thereof, or any person deputized by it, shall have the power, for the purpose of this Article, to tax costs against the parties, to administer or cause to have administered oaths, to preserve order at hearings, to compel the attendance and testimony of witnesses, and to compel the production of books, papers, records, and other tangible things.

(c) The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the

*Amanda J. Reeder
Commission Counsel*

Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed.

(d) The Commission may order testimony to be taken by deposition and any party to a proceeding under this Article may, upon application to the Commission, which application shall set forth the materiality of the evidence to be given, cause the depositions of witnesses residing within or without the State to be taken, the costs to be taxed as other costs by Commission. Depositions ordered by the Commission upon application of a party shall be taken after giving the notice and in the manner prescribed by law for depositions in action at law, except that they shall be directed to the Commission, the commissioner, or the deputy commissioner before whom the proceedings may be pending.

(e) A subpoena may be issued by the Commission and served in accordance with G.S. 1A-1, Rule 45. A party shall not issue a subpoena duces tecum less than 30 days prior to the hearing date except upon prior approval of the Commission. Upon a motion, the Commission may quash a subpoena if it finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. Each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county where the hearing is held.

(f) The Commission may by rule provide for and limit the use of interrogatories and other forms of discovery, including production of books, papers, records, and other tangible things, and it may provide reasonable sanctions for failure to comply with a Commission order compelling discovery.

(g) The Commission or any member or deputy thereof shall have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to hold a person in civil contempt, as provided thereunder, for failure to comply with an order of the Commission, Commission member, or deputy. A person held in civil contempt may appeal in the manner provided for appeals pursuant to G.S. 97-85 and G.S. 97-86. The provisions of G.S. 5A-24 shall not apply to appeals pursuant to this subsection.

(h) The Commission or any member or deputy thereof shall also have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal contempt, subject to the limitations thereunder, (i) for willful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (ii) for willful disobedience of a lawful order of the Commission or a member or deputy thereof; or (iii) for willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when refusal is not legally justified. The Commission or any member or deputy thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall be before a district court judge, and venue lies throughout the district where the order was issued directing the person charged to appear. A person found in criminal

*Amanda J. Reeder
Commission Counsel*

contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing de novo before a superior court judge. (1929, c. 120, s. 54; 1977, cc. 456, 505; 1981 (Reg. Sess., 1982), c. 1243, s. 2; 1993, c. 321, s. 25(b); c. 399, s. 1; 1993 (Reg. Sess., 1994), c. 679, ss. 5.3, 5.4; 1995, c. 358, s. 8(a), (b); c. 437, s. 6(a), (b); c. 467, s. 5(a), (b); c. 507, ss. 25.13, 27.8(o); c. 509, s. 48; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2011-287, s. 19; 2013-294, s. 6.)

G.S. 143B, Article 31. Tort Claims against State Departments and Agencies.

§ 143-291.1. Costs.

The Industrial Commission is authorized by such order to tax the costs against the loser in the same manner as costs are taxed by the superior court in civil actions. When a State department, institution, or agency appeals the decision rendered by the hearing commissioner to the full Commission, the State department, institution or agency shall furnish a copy of the transcript of the hearing to the appellee without cost therefor. The State department, institution or agency concerned is authorized and directed to pay such costs as may be taxed against it, including all costs heretofore taxed against such department, agency or institution. (1955, c. 1102, s. 2; 1971, c. 58.)

§ 143-291.2. Costs and fees.

(a) The Industrial Commission may by order tax the costs against the losing party in the same amount and the same manner as costs are taxed in the General Court of Justice. When a State department, institution, or agency appeals to the full commission the decision rendered by a hearing commissioner, the State department, institution, or agency shall furnish a copy of the transcript of the hearing to the appellee without cost. The State department, institution, or agency concerned may pay the costs taxed against it. When costs are not paid by a party from whom they are due, the Industrial Commission shall issue an execution for the costs and attach a bill of costs to each execution. The Sheriff shall levy upon the execution as provided in Chapter 6 of the General Statutes in civil actions.

(b) The Industrial Commission shall charge a filing fee for each affidavit initiating a claim filed under this Article in an amount equal to the filing fee charged for civil actions in the Superior Court Division of the General Court of Justice. No filing fee shall be required of indigent persons, provided each claim by an indigent complies with all statutory and administrative requirements applicable to the filing of civil actions by indigents in the Superior Court Division of the General Court of Justice. (1987 (Reg. Sess., 1988), c. 1087, s. 2.)

§ 143-300. Rules and regulations of Industrial Commission; destruction of records.

The Industrial Commission is hereby authorized and empowered to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of this Article. The North Carolina Rules of Civil Procedure and Rules of Evidence,

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Commission Counsel*

insofar as they are not in conflict with the provisions of this Article, shall be followed in proceedings under this Article. When any case or claim under this Article has been closed by proper order or award, all records concerning such case or claim may, after five years, in the discretion of the Industrial Commission with and by the authorization of the Department of Cultural Resources, be destroyed by burning or otherwise; provided, that no record pertaining to a case or claim of a minor shall be destroyed until the expiration of three years after such minor attains the age of 18 years. (1951, c. 1059, s. 12; 1957, c. 311; 1971, c. 1231, s. 1; 1973, c. 476, s. 48; 1987 (Reg. Sess., 1988), c. 1087, s. 7.)

§ 7A-305. Costs in civil actions.

(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars (\$12.00) in cases heard before a magistrate, and the sum of sixteen dollars (\$16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of four dollars (\$4.00), to be credited to the Court Information Technology Fund.

(2) For support of the General Court of Justice, the sum of one hundred eighty dollars (\$180.00) in the superior court and the sum of one hundred thirty dollars (\$130.00) in the district court except that if the case is assigned to a magistrate the sum shall be eighty dollars (\$80.00). If a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, upon assignment the party filing the notice of designation pursuant to G.S. 7A-45.4 or the motion for complex business designation shall pay an additional one thousand dollars (\$1,000) for support of the General Court of Justice; if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3 by a court on its own motion, upon assignment the plaintiff shall pay an additional one thousand dollars (\$1,000) for support of the General Court of Justice. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and fifty cents (\$1.50) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

(a1) Costs apply to any and all additional and subsequent actions filed by amendment or counterclaim to the original action brought under Chapter 50B of the General Statutes, unless such additional and subsequent amendment or counterclaim to the action is limited to requests for relief authorized by Chapter 50B of the General Statutes.

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Commission Counsel*

(a2) **(Effective until July 1, 2014)** In every action for absolute divorce filed in the district court, a cost of seventy-five dollars (\$75.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer, who shall deposit thirty-five dollars (\$35.00) to the North Carolina Fund for Displaced Homemakers established under G.S. 143B-394.10 and forty dollars (\$40.00) to the Domestic Violence Center Fund established under G.S. 50B-9. Costs assessed under this subsection shall be in addition to any other costs assessed under this section.

(a2) **(Effective July 1, 2014)** In every action for absolute divorce filed in the district court, a cost of seventy-five dollars (\$75.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer, who shall deposit seventy-five dollars (\$75.00) to the Domestic Violence Center Fund established under G.S. 50B-9. Costs assessed under this subsection shall be in addition to any other costs assessed under this section.

(a3), (a4) Repealed by Session Laws 2008-118, s. 2.9(c), effective July 1, 2008.

(a5) In every civil action in the superior or district court wherein a party files a pleading containing one or more counterclaims, third-party complaints, or cross-claims, except for counterclaim and cross-claim actions brought under Chapter 50B of the General Statutes for which costs are assessed pursuant to subsection (a1) of this section, the following shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars (\$12.00) in cases heard before a magistrate, and the sum of sixteen dollars (\$16.00) in district and superior court, to be remitted to the municipality providing the facilities in which the judgment is rendered. If a municipality does not provide the facilities in which the judgment is rendered, the sum is to be remitted to the county in which the judgment is rendered. Funds derived from the facilities' fees shall be used in the same manner, for the same purposes, and subject to the same restrictions as facilities' fees assessed in criminal actions.

(2) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of four dollars (\$4.00), to be credited to the Court Information Technology Fund.

(3) For support of the General Court of Justice, the sum of one hundred eighty dollars (\$180.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, filing fees shall be collected and disbursed in accordance with subsection (a) of this section, and the sum of one hundred thirty dollars (\$130.00) in the district court, except that if the case is assigned to a magistrate, the sum shall be eighty dollars (\$80.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and fifty cents (\$1.50) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

*Amanda J. Reeder
Commission Counsel*

(b) On appeal, costs are cumulative, and when cases heard before a magistrate are appealed to the district court, the General Court of Justice fee and the facilities fee applicable in the district court shall be added to the fees assessed before the magistrate. When an order of the clerk of the superior court is appealed to either the district court or the superior court, no additional General Court of Justice fee or facilities fee shall be assessed.

(b1) When a defendant files an answer in an action filed as a small claim which requires the entire case to be withdrawn from a magistrate and transferred to the district court, the difference between the General Court of Justice fee and facilities fee applicable to the district court and the General Court of Justice fee and facilities fee applicable to cases heard by a magistrate shall be assessed. The defendant is responsible for paying the fee.

(c) The clerk of superior court, at the time of the filing of the papers initiating the action or the appeal, shall collect as advance court costs, the facilities fee, General Court of Justice fee, and the divorce fee imposed under subsection (a2) of this section, except in suits by an indigent. The clerk shall also collect the fee for discovery procedures under Rule 27(a) and (b) at the time of the filing of the verified petition.

(d) The following expenses, when incurred, are assessable or recoverable, as the case may be. The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

(1) Witness fees, as provided by law.

(2) Jail fees, as provided by law.

(3) Counsel fees, as provided by law.

(4) Expense of service of process by certified mail and by publication.

(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.

(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars (\$50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

(7) Fees of mediators appointed by the court, mediators agreed upon by the parties, guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of interpreters, when authorized and approved by the court.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

*Amanda J. Reeder
Commission Counsel*

(10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions and for the cost of deposition transcripts.

(11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings.

Nothing in this subsection or in G.S. 6-20 shall be construed to limit the trial court's authority to award fees and expenses in connection with pretrial discovery matters as provided in Rule 26(b) or Rule 37 of the Rules of Civil Procedure, and no award of costs made pursuant to this section or pursuant to G.S. 6-20 shall reverse or modify any such orders entered in connection with pretrial discovery.

(e) Nothing in this section shall affect the liability of the respective parties for costs as provided by law.

(f) For the support of the General Court of Justice, the sum of twenty dollars (\$20.00) shall accompany any filing of a notice of hearing on a motion not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a notice of hearing on a motion containing as a sole claim for relief the taxing of costs, including attorneys' fees, to a motion filed pursuant to G.S. 1C-1602 or G.S. 1C-1603, or to a motion filed by a child support enforcement agency established pursuant to Part D of Title IV of the Social Security Act. No more than one fee shall be assessed for any motion for which a notice of hearing is filed, regardless of whether the hearing is continued, rescheduled, or otherwise delayed.

§ 132-6.2. Provisions for copies of public records; fees.

(a) Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The public agency may assess different fees for different media as prescribed by law.

(b) Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law. Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy. For purposes of this subsection, "actual cost" is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made. Notwithstanding the provisions of this subsection, if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the actual cost incurred for such extensive use of

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Commission Counsel*

information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency. If anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the State Chief Information Officer or his designee to mediate the dispute.

(c) Persons requesting copies of computer databases may be required to make or submit such requests in writing. Custodians of public records shall respond to all such requests as promptly as possible. If the request is granted, the copies shall be provided as soon as reasonably possible. If the request is denied, the denial shall be accompanied by an explanation of the basis for the denial. If asked to do so, the person denying the request shall, as promptly as possible, reduce the explanation for the denial to writing.

(d) Nothing in this section shall be construed to require a public agency to respond to requests for copies of public records outside of its usual business hours.

(e) Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record that does not exist. If a public agency, as a service to the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester. Nothing in this section shall be construed to require a public agency to put into electronic medium a record that is not kept in electronic medium. (1995, c. 388, s. 3; 2004-129, s. 38.)

4 NCAC 10E .0203 is adopted as published in 27:02 NCR 216 as follows:

The Rule as approved by the Commission in 2012:

4 NCAC 10E .0203 FEES SET BY THE COMMISSION

(a) In workers' compensation cases, the Commission sets the following fees:

- (1) three hundred seventy-five dollars (\$375.00) for the processing of a compromise settlement agreement;
- (2) two hundred fifty dollars (\$250.00) for the processing a Form 21 *Agreement for Compensation for Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A *Employer's Admission of Employee's Right to Permanent Partial Disability*;
- (3) three hundred dollars (\$300.00) for the processing of a request for a third party distribution order;
- (4) one hundred seventy-five dollars (\$175.00) for the processing of a Form 24 *Application to Stop or Suspend Payment of Compensation*; and
- (5) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be Assigned for Hearing*.

(b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the Superior Court division of the General Court of Justice.

History Note: Authority G.S. 97-10.2; 97-17; 97-18.1 ~~97-18.2~~; 97-26(i); 97-73; 97-80; 143-291.2; 143-300.
Eff. January 1, 2013.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10E .0201

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I note that this Rule is almost exactly the same Rule the Commission approved in October 2012. Why did you combine the language that was originally in Paragraphs (b) and (c) into Paragraph (b)?

On line 12, the quotation mark is backwards.

In Paragraph (d), when is the sales tax applicable?

Why is G.S. 7A-305 in this History Note? Is this because it's a scope rule?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10E .0201 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **SECTION .0200 – FEES**
5

6 **04 NCAC 10E .0201 DOCUMENT AND RECORD FEES**

7 (a) The fees in this Rule apply to all subject areas within the authority of the Commission.

8 (b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter
9 132 of the North Carolina General Statutes, copies of documents and audio recordings of Commission hearings are
10 available at the “actual cost” as defined by G.S. 132-6.2(b). The Commission shall provide the “actual cost” on the
11 Commission’s website. Certification of documents in the Commission’s claim files is available upon request at a
12 cost of one dollar (\$1.00) per certification in addition to the “actual cost” for the copies of the documents.
13 Electronic copy certification is not available.

14 (c) Documents shall be sent via certified mail upon request at the actual cost established by the United States Postal
15 Service.

16 (d) North Carolina sales tax shall be added if applicable.
17

18 *History Note: Authority G.S. 7A-305; 97-73; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300;*
19 *Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10E .0202

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I strongly encourage you to move the language on lines 18 and 19 to the first line to make it clear at the outset that the employer will generally pay the fees.

In (a)(2), every continuance will have a \$120 fee?

Subparagraph (a)(5) is much too complex to read as organized. I note that you combined language from the approved Rule text to do this. I suggest that you either separate them again or break this down further:

*(2) one hundred twenty dollars...
 (A) if the appeal...; or
 (B) for the dismissal of....*

In Paragraph (b), use the language you published on line 20. "Paragraph (a) of this Rule"

I note that the language in Paragraph (c) is the same language the Commission approved in October 2012. Still, when will the penalties be assessed by the Commission? If you are relying upon a statute for the discretionary language, please state "as set forth in G.S. XX."

Since you cite to it in Paragraph (b), add 97-88.1 to your History Note. Why is G.S. 7A-305 in the History Note?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10E .0202 is adopted as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, as follows:

04 NCAC 10E .0202 HEARING COSTS OR FEES

(a) The following hearing costs or fees apply to all subject areas within the authority of the Commission:

(1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged after the hearing has been held;

(2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a specific hearing date, to be paid by the requesting party or parties;

(3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case is calendared for a specific hearing date;

(4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged after the hearing has been held;

(5) one hundred twenty dollars (\$120.00) if an appeal or request for review to the Full Commission is withdrawn or for the dismissal of an appeal or request for review due to the failure to prosecute or perfect the appeal or request for review after the appeal or request for review is scheduled for a specific hearing date;

In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise, except as specified in subsection (2) above.

(b) The Commission may waive fees set forth in subsection (a) of this rule, or assess such fees against a party or parties pursuant to G.S. 97-88.1 if the Commission determines that the hearing has been brought, prosecuted, or defended without reasonable ground.

(c) Failure to pay fees or costs assessed by the Commission may result in penalties. The Commission may issue a notice and order to show cause as to why a fee or cost assessed by the Commission has not been paid.

*History Note: Authority G.S. 7A-305; 97-73; 97-80; 143-291.1; 143-291.2; 143-300;
Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10E .0203

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

You need to be consistent and end (a)(1) through (4) with periods and semicolons. Typically, a list of this sort would end with semicolons and (a)(3) would end with an "and." However, I am fine if you use periods for all four. Just be consistent.

So, in (a)(2), there won't be an employer carrier here?

I take the form in (a)(3) is on the website and is not subject to S.L. 2013-294 Section 7?

Also in (a)(3), I understand the award is not guaranteed, but on line 22 do you mean "any benefits determined..."? And end the sentence on line 23 with "employee." Begin the next sentence, "The employer(s)..."

Why isn't G.S. 7A-305 in the History Note, especially as you are referring to civil actions in the General Court of Justice?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10E .0203 is adopted as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

04 NCAC 10E .0203 FEES SET BY THE COMMISSION

(a) In workers' compensation cases, the Commission sets the following fees:

- (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). Unless the parties agree otherwise, the employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission, and shall then be entitled to a credit for the employee's 50% share of such fee against settlement proceeds;
- (2) three hundred dollars (\$300.00) for the processing of a Form 21 *Agreement for Compensation for Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A *Employer's Admission of Employee's Right to Permanent Partial Disability* to be paid by the employee and the employer in equal shares. The employer shall pay such fee in full when submitting the agreement to the Commission. Unless the parties agree otherwise or the award totals \$3,000 or less, the employer shall be entitled to a credit for the employee's 50% share of such fee against the award;
- (3) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from benefits that may be determined to be due to the employee, and the employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose.
- (4) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be Assigned for Hearing*, to be paid by the intervenor.

(b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the Superior Court division of the General Court of Justice.

History Note: Authority G.S. [97-10.2,] 97-17; [97-18.2,] 97-26(i); 97-73; 97-80; 143-291.2; 143-300; Eff. April 1, 2014.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10E .0301

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 8, "Rules" should be lowercase.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10E .0301 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **SECTION .0300 – RULES OF THE COMMISSION**

5
6 **04 NCAC 10E .0301 WAIVER OF RULES**

7 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the
8 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
9 case pending before the Commission upon written application of a party or upon its own initiative only if the
10 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
11 waiver are:

- 12 (1) the necessity of a waiver;
13 (2) the party's responsibility for the conditions creating the need for a waiver;
14 (3) the party's prior requests for a waiver;
15 (4) the precedential value of such a waiver;
16 (5) notice to and opposition by the opposing parties; and
17 (6) the harm to the party if the waiver is not granted.

18
19 *History Note: Authority G.S. 97-25.2; 97-25.4; 97-73; 97-80; 130A-425(d); 143-166.4; 143-296; 143-300;*
20 *Eff. April 1, 2014.*

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: North Carolina Industrial Commission

RULE CITATION: Rules 04 NCAC 10G .0104A and .0107

RECOMMENDED ACTION:

- X 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:

These Rules govern fees set by the Industrial Commission for mediation fees. Staff is aware that in 2012, there was considerable concern about the fees put in these Rules. While the fees may not be well received by the regulated public, staff believes that the Industrial Commission has the authority to set fees within the limits of the law, specifically Chapters 97 and 143, Article 31.

I have attached the laws cited by the Industrial Commission in the History Notes of the Rules for your reference.

*Amanda J. Reeder
Commission Counsel*

§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.

(a) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes and not inconsistent with this Article, for carrying out the provisions of this Article.

The Commission shall adopt rules establishing processes and procedure to be used under this Article.

Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be.

(b) The Commission or any member thereof, or any person deputized by it, shall have the power, for the purpose of this Article, to tax costs against the parties, to administer or cause to have administered oaths, to preserve order at hearings, to compel the attendance and testimony of witnesses, and to compel the production of books, papers, records, and other tangible things.

(c) The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, **except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed.**

§ 143-296. Powers of Industrial Commission; deputies.

The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, punish for contempt, and issue writs of habeas corpus ad testificandum pursuant to G.S. 97-101.1. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this Article vested in the members of the Industrial Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workers' Compensation Act when assigned to do so by the Industrial Commission. The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, **except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed.** (1951, c. 1059, s. 6; 1979, c. 714, s. 2; 1993, c. 399, s. 2; c. 321, s. 25(b); 1995, c. 358, s. 8(a); c. 437, s. 6(a); c. 467, s. 5(a); c. 507, s. 25.13; 1998-217, s. 31.1(b).)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10G .0104A

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), if a party cannot speak or understand English, how are they going to send you all written notice of this and include what is required in the notice?

In (b), delete the language on lines 32 and 33. Amend the sentence on lines 33 and 34 to state: "The party requesting assistance of a qualified foreign language interpreter shall bear the costs."

So that I understand, (b) is when a party asks for an interpreter, and (c) is when the mediator requires it. And when will the mediator determine this is necessary? After receipt of the letter in (a)?

In Paragraph (c), Page 1, line 36, delete the comma after "disinterested interpreter"

Also on line 36, "Paragraph" is capitalized, and that is how it was published.

In Paragraph (e), Page 2, line 14, replace the language "located at..." with "as set forth in Rule 04 NCAC 10A .0101."

In the History Note, be consistent with other Rules (see 10A .0605). State "97-80(a); 97-80(c);"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10G .0104A is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, as follows:

04 NCAC 10G .0104A FOREIGN LANGUAGE INTERPRETERS

~~(a) Services of Foreign Language Interpreters Required Unless Waived. When a person who does not speak or understand the English language is required to attend a mediation conference, the person shall be assisted by a qualified foreign language interpreter unless the right to an interpreter is waived by both parties.~~

~~(b) Qualifications of Interpreters. To qualify as a foreign language interpreter, a person must possess sufficient experience and education, or a combination of experience and education, speaking, and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to N.C. Gen. Stat. §8C-1, Rule 702.~~

~~(c) Notice to Industrial Commission and Opposing Party of Need for Interpreter. Any party who is unable to speak or understand English shall so notify the Industrial Commission and the opposing party, in writing, not less than 21 days prior to the date of the mediation conference. The notice shall state with specificity the language(s) that must be interpreted.~~

~~(d) Designation of Interpreter. Upon notice of the need for an interpreter, the employer or insurer shall retain a qualified, disinterested interpreter, either agreed upon by the parties or approved by the Industrial Commission, to assist at the mediation conference.~~

~~(e) Interpreter Fees. The interpreter's fee shall constitute a cost as contemplated by N.C. Gen. Stat. §97-80. A qualified interpreter who appears at a mediation conference shall be entitled to payment of the fee agreed upon by the interpreter and employer or insurer that retained the interpreter. Except in cases where a claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall be paid by the employer or insurer. Where it is ultimately determined by the Commission that the request for an interpreter was unfounded, attendant costs may be assessed against the movant.~~

~~(f) Interpreter Ethics. Foreign language interpreters shall abide by the code of ethical conduct for court interpreters promulgated by the North Carolina Administrative Office of the Courts and adopted by the Industrial Commission and shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications.~~

(a) Any party who is unable to speak or understand English shall so notify the Commission, the mediator, and the opposing party(ies) in writing, not less than 21 days prior to the date of the mediated settlement conference. The notice shall contain the party's primary language and how the party plans to communicate in English during the mediation.

(b) If either party shall request assistance by a qualified foreign language interpreter for a party who does not speak or understand the English language, the party requesting the assistance of the foreign language interpreter shall bear the costs.

(c) If the certified mediator, in his or her discretion, notifies the parties of the need for a qualified foreign language interpreter, the parties shall retain a disinterested interpreter, who possesses the qualifications listed in paragraph (d) of this Rule, to assist at the mediated settlement conference. The fee of the foreign language interpreter and any

1 postponement fees necessitated by the need for a qualified foreign language interpreter shall be shared by the parties
2 unless the parties agree otherwise.

3 (d) A qualified foreign language interpreter shall possess sufficient experience and education, or a combination of
4 experience and education, in speaking and understanding English and the foreign language to be interpreted, to
5 qualify as an expert witness pursuant to G.S. 8C-1, Rule 702.

6 (e) Qualified foreign language interpreters shall abide by the Code of Conduct and Ethics of Foreign Language
7 Interpreters and Translators, contained in Part 4 of *Policies and Best Practices for the Use of Foreign Language*
8 *Interpreting and Translating Services in the North Carolina Court System* and promulgated by the North Carolina
9 Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing,
10 commenting, or summarizing, testimony or other communications. The Code of Conduct and Ethics of Foreign
11 Language Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and
12 editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's
13 website, <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the
14 offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina,
15 between the hours of 8:00 a.m. and 5:00 p.m.

16
17 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300;*

18 *Eff. January 1, 2011;*

19 *Amended Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10G .0107

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I know this version of the Rule is almost the exact language that was approved by the Rules Review Commission in November 2012. However, some changes are needed.

In Subparagraph (b)(3), Page 2, line 32, delete "but not limited to"

In Subparagraph (b)(4), Page 3, line 2, state "14" (See Rule 26 NCAC 02C .0108(9)).

In Subparagraph (b)(4), so that I understand, there is no cancellation fee due if the cancellation is 15 calendar days or more from the date? And I note this is a new fee that was not in the November 2012 approved version.

In Paragraph (c), Page 3, line 6, state "conference shall pay"

I am a bit confused by Paragraph (c), line 7 and Paragraph (d), line 21, both on Page 3. Can both the Commission and the Dispute Coordinator enter an order for fees as penalty for violation of a Rule?

In (c), line 8, "rules" should be lowercase.

Shouldn't Subparagraph (c)(4) begin with with "if applicable"?

In (d) on lines 22 and 24, do you mean "shall" rather than "may"?

In the History Note, be consistent with other Rules (see 10A .0605). State "97-80(a); 97-80(c);"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10G .0107 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, as follows:

04 NCAC 10G .0107 COMPENSATION OF THE MEDIATOR

~~(a) By Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.~~

~~(b) By Commission Order. When the mediator is appointed by the Commission, the mediator's compensation shall be as follows:~~

~~(1) Conference Fees. The mediator shall be paid by the parties at the rate of \$150.00 per hour for mediation services at the conference.~~

~~(2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee of \$150.00, unless otherwise ordered by the Commission. The mediator's administrative fee shall be paid in full unless, within 10 days after the date that the mediator has been appointed, written notice is given to the mediator and the Dispute Resolution Coordinator that the issues for which a request for hearing had been filed have been fully resolved or the hearing request has been withdrawn.~~

~~(3) Postponement Fees. As used herein, the term "postpone" shall mean to reschedule or otherwise not proceed with a scheduled mediation conference after that conference has been scheduled to convene on a specific date. After a conference is scheduled to convene on a specific date it may not be postponed without the requesting party first notifying all other parties concerning the grounds for the requested postponement, or without the consent and approval of the mediator or the Dispute Resolution Coordinator. If a mediation conference is postponed without good cause, the mediator shall be paid a postponement fee unless, upon application of the party or parties charged with the fee, the fee is waived by the Commission. Unless the Commission otherwise orders, the postponement fee shall be \$300.00 if the mediation conference is postponed within seven calendar days of the scheduled conference, and \$150.00 if the mediation conference is postponed more than seven calendar days prior to a scheduled conference. Postponement fees shall be allocated in equal shares to the party or parties requesting the postponement unless otherwise ordered by the Commission.~~

~~(4) The settlement of a case prior to the scheduled date for mediation shall be good cause for a postponement provided that the mediator was notified of the settlement immediately after it was reached and the mediator received notice of the settlement at least fourteen (14) calendar days prior to the date scheduled for mediation.~~

~~(c) Payment by Parties. Payment shall be due upon completion of the conference; provided, that the State shall be billed at the conference and pay within 30 days of receipt of the billing, and insurance companies or carriers whose written procedures do not provide for payment of the mediator at the conference may pay within 15 days of the conference. Unless otherwise agreed to by the parties or ordered by the Commission, costs of the mediated settlement conference shall be allocated to the parties, as follows: one share by plaintiff(s); one share by the workers' compensation defendant employer or its insurer, or if more than one employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share by each separately represented entity; one share by participating third party tort defendants or their carrier, or if there are conflicting interests among them, one share~~

~~from each such defendant or group of defendants having shared interests; and, one share by the defendant State agency in a State Tort Claims Act case. Parties obligated to pay a share of the costs shall be responsible for equal shares; provided, however, that in workers' compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and substitution fees, as well as its own. Unless the Dispute Resolution Coordinator enters an Order allocating such fees to a particular party, the fees may be taxed as other costs by the Commission. The defendant shall be reimbursed for the plaintiff's share of such fees when the case is concluded from benefits that may be determined to be due to the plaintiff, and the defendant may withhold funds from any award for this purpose.~~

(a) By Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.

(b) By Commission Order. When the mediator is appointed by the Commission, the mediator's compensation shall be as follows:

(1) Conference Fees. The mediator shall be paid by the parties at the rate of one hundred fifty dollars (\$150.00) per hour for mediation services provided at the mediated settlement conference.

(2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee of one hundred fifty dollars (\$150.00). The mediator's administrative fee shall be paid in full unless, within 10 days after the mediator has been appointed, written notice is given to the mediator and to the Dispute Resolution Coordinator that the issues for which a request for hearing was filed have been fully resolved or that the hearing request has been withdrawn.

(3) Postponement Fees. As used in this Subchapter, the term "postpone" means to reschedule or otherwise not proceed with a scheduled mediated settlement conference after the conference has been scheduled to convene on a specific date. After a conference is scheduled to convene on a specific date, the conference may not be postponed unless the requesting party notifies all other parties of the grounds for the requested postponement and obtains the consent and approval of the mediator or the Dispute Resolution Coordinator. If the conference is postponed without good cause, the mediator shall be paid a postponement fee. The postponement fee shall be three hundred dollars (\$300.00) if the conference is postponed within seven calendar days of the scheduled date, and one hundred fifty dollars (\$150.00) if the conference is postponed more than seven calendar days prior to the scheduled date. Unless otherwise ordered by the Commission in the interests of justice, postponement fees shall be allocated in equal shares to the party or parties requesting the postponement. As used in this Rule, "good cause" shall mean that the reason for the postponement involves a situation over which the party seeking the postponement has no control, including but not limited to, a party or attorney's illness, a death in a party or attorney's family, a demand by a judge that a party or attorney for a party appear in court, or inclement weather such that travel is prohibitive.

(4) The settlement of a case prior to the scheduled date of the mediated settlement conference shall be good cause to cancel the mediation without the approval of the mediator or the Dispute Resolution Coordinator. The parties shall notify the mediator of any cancellation due to settlement. The

mediator may charge a cancellation fee of one hundred fifty dollars (\$150.00) if notified of the cancellation within fourteen days of the scheduled date, or three hundred dollars (\$300.00) if notified within seven days of the scheduled date.

(c) Payment by Parties. Payment is due upon completion of the mediated settlement conference; provided, that the State shall be billed at the conference and shall pay within 30 days of receipt of the bill, and insurance companies or carriers whose written procedures do not provide for payment of the mediator at the conference may pay within 15 days of the conference. Unless otherwise agreed to by the parties or ordered by the Commission due to a party or parties violating a Rule in this Subchapter, the costs of the conference shall be allocated to the parties, as follows:

(1) one share by plaintiff(s);

(2) one share by the workers' compensation defendant-employer or its insurer, or if more than one employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share by each separately represented entity;

(3) one share by participating third-party tort defendants or their carrier, or if there are conflicting interests among them, one share from each defendant or group of defendants having shared interests; and

(4) one share by the defendant State agency in a Tort Claims Act case.

Parties obligated to pay a share of the costs are responsible for equal shares; provided, however, that in workers' compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and substitution fees, as well as defendant's own share. If plaintiff requests postponement of the mediated settlement conference, defendants shall be entitled to a credit for the postponement fee.

(d) Unless the Dispute Resolution Coordinator enters an order allocating such fees to a particular party due to the party violating a Rule in this Subchapter, the fees may be taxed as other costs by the Commission. After the case is concluded, the defendant shall be reimbursed for the plaintiff's share of such fees from benefits that may be determined to be due to the plaintiff, and the defendant may withhold funds from any award for this purpose.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 7 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 4 NCAC 10A .0616; Amended Eff. April 1, 2014; January 1, 2011; June 1, 2000.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10G .0110

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 8, "Rules" should be lowercase.

In the History Note, be consistent with other Rules (see 10A .0605). State "97-80(a); 97-80(c);"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10G .0110 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10G .0110 WAIVER OF RULES**

5 ~~In the interest of justice, or to comply with the law from time to time as it may be amended or declared, the~~
6 ~~Commission may waive any requirement of these rules.~~

7 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the
8 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
9 case pending before the Commission upon written application of a party or upon its own initiative only if the
10 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
11 waiver are:

- 12 (1) the necessity of a waiver;
13 (2) the party's responsibility for the conditions creating the need for a waiver;
14 (3) the party's prior requests for a waiver;
15 (4) the precedential value of such a waiver;
16 (5) notice to and opposition by the opposing parties; and
17 (6) the harm to the party if the waiver is not granted.

18
19 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300;*
20 *Eff. January 16, 1996;*
21 *Amended Eff. October 1, 1998;*
22 *Recodified from 4 NCAC 10A .0616;*
23 *Amended Eff. April 1, 2014; June 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10H .0206

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 6, "Rules" should be lowercase.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10H .0206 is adopted as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, as follows:

04 NCAC 10H .0206 WAIVER OF RULES

In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

*History Note: Authority G.S. 97-80(a); 143-166.4;
Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10I .0204

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 6, "Rules" should be lowercase.

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

Please confirm this Rule is a product of minutes that is being created under S.L. 2013-294, Section 8, Item 12.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

1 Rule 04 NCAC 10I .0204 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10I .0204 WAIVER OF RULES**

5 In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the
6 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
7 case pending before the Commission upon written application of a party or upon its own initiative only if the
8 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
9 waiver are:

- 10 (1) the necessity of a waiver;
11 (2) the party's responsibility for the conditions creating the need for a waiver;
12 (3) the party's prior requests for a waiver;
13 (4) the precedential value of such a waiver;
14 (5) notice to and opposition by the opposing parties; and
15 (6) the harm to the party if the waiver is not granted.

16
17 *History Note: Authority G.S. 97-80(a); 130A-425(d);*
18 *Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10J .0101

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please confirm this Rule is a product of minutes that is being created under S.L. 2013-294, Section 8, Item 12.

Paragraph (a) is confusing. The way it is written makes it sound as if you adopted this medical fee rule outside of rulemaking, when G.S. 97-26(a) clearly requires it to be adopted as a Rule.

§ 97-26. Fees allowed for medical treatment; malpractice of physician.

(a) Fee Schedule. - The Commission shall adopt by rule a schedule of maximum fees for medical compensation and shall periodically review the schedule and make revisions.

The fees adopted by the Commission in its schedule shall be adequate to ensure that (i) injured workers are provided the standard of services and care intended by this Chapter, (ii) providers are reimbursed reasonable fees for providing these services, and (iii) medical costs are adequately contained.

The Commission just approved most of this language in October 2012, and I know it was not adopted outside of rulemaking. However, I think the language on Page 1 in Paragraph (a) should be revised to state, "The Commission adopted a Medical Fee Schedule pursuant to G.S. 97-26(a)..."

In (b), line 21, rather than give the street address, refer to Rule 04 NCAC 10A .0101.

In (d)(1), Page 1, line 31, there is an extra space between the colon and the word. Note the same concern for (d)(3), line 20, Page 2.

In (d)(1)(B), Page 2, Line 1 and 2, can't you now remove "the minimum payment is 75 percent of the hospital's itemized charges. Effective February 1, 2013" language? Do you still have claims that predate February 1, 2013? Note the same general question about removing the "Effective February 1, 2013" language for (d)(1)(C), (d)(2)(A) and (B), and (d)(3) and just retaining the language that is currently in effect and has been for over a year.

Please note the same query regarding the April 2013 effective dates.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

In (e), Page 3, line 1, I note that you are allowing employers to reimburse without Commission prior approval. However, G.S. 97-26(g) states:

(g) Direct Reimbursement. - The Commission may adopt rules to allow insurers and managed care organizations to review and reimburse charges for medical compensation without submitting the charges to the Commission for review and approval.

I am not familiar with your system; are employers considered part and parcel of an insurer? What if an employer is not insured - what is your authority to allow this without prior approval?

§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims; agreement for fee or compensation.

(a) Fees for attorneys and charges of health care providers for medical compensation under this Article shall be subject to the approval of the Commission; but no physician or hospital or other medical facilities shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Commission in connection with the case. **Except as provided in G.S. 97-26(g), a request for a specific prior approval to charge shall be submitted to the Commission for each such fee or charge.**

On Page 3, this is not the proper way to rename Paragraphs. Do this: ~~(e)~~(f), which is how it was published.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10J .0101 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

SUBCHAPTER 10J – FEES FOR MEDICAL COMPENSATION

SECTION 0100 – FEES FOR MEDICAL COMPENSATION

04 NCAC 10J .0101 FEES FOR MEDICAL COMPENSATION

(a) The Commission has adopted and published a Medical Fee Schedule, pursuant to the provisions of G.S. 97-26(a), setting maximum amounts, except for hospital fees pursuant to G.S. 97-26(b), that may be paid for medical, surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances. The amounts prescribed in the applicable published Fee Schedule shall govern and apply according to G.S. 97-26(c).

(b) The Commission's Medical Fee Schedule contains maximum allowed amounts for medical services provided pursuant to Chapter 97 of the General Statutes. The Medical Fee Schedule utilizes 1995 through the present, Current Procedural Terminology (CPT) codes adopted by the American Medical Association, Healthcare Common Procedure Coding Systems (HCPCS) codes, and jurisdiction-specific codes. A listing of the maximum allowable amount for each code is available on the Commission's website at <http://www.ic.nc.gov/ncic/pages/feesched.asp> and in hardcopy at 430 N. Salisbury Street, Raleigh, North Carolina.

(c) The following methodology provides the basis for the Commission's Medical Fee Schedule:

- (1) CPT codes for General Medicine are based on 1995 North Carolina Medicare values multiplied by 1.58, except for CPT codes 99201-99205 and 99211-99215, which are based on 1995 Medicare values multiplied by 2.05.
- (2) CPT codes for Physical Medicine are based on 1995 North Carolina Medicare values multiplied by 1.36.
- (3) CPT codes for Radiology are based on 1995 North Carolina Medicare values multiplied by 1.96.
- (4) CPT codes for Surgery are based on 1995 North Carolina Medicare values multiplied by 2.06.

(d) The Commission's Hospital Fee Schedule, adopted pursuant to G.S. 97-26(b), provides for payment as follows:

- (1) Inpatient hospital fees: Inpatient services are reimbursed based on a Diagnostic Related Groupings (DRG) methodology. The Hospital Fee Schedule utilizes the 2001 Diagnostic Related Groupings adopted by the State Health Plan. Each DRG amount is based on the amount that the State Health Plan had in effect for the same DRG on June 30, 2001.
DRG amounts are further subject to the following payment band that establishes maximum and minimum payment amounts:

- (A) The maximum payment is 100 percent of the hospital's itemized charges.

- (B) For hospitals other than critical access hospitals, the minimum payment is 75 percent of the hospital's itemized charges. Effective February 1, 2013, the minimum payment rate is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (C) For critical access hospitals, the minimum payment is 77.07 percent of the hospital's itemized charges. Effective February 1, 2013, the minimum payment rate is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (2) Outpatient hospital fees: Outpatient services are reimbursed based on the hospital's actual charges as billed on the UB-04 claim form, subject to the following percentage discounts:
- (A) For hospitals other than critical access hospitals, the payment shall be 79 percent of the hospital's billed charges. Effective February 1, 2013, the payment is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (B) For critical access hospitals, the payment shall be 87 percent of the hospital's billed charges. For purposes of the hospital fee schedule, critical access hospitals are those hospitals designated as such pursuant to federal law (42 CFR 485.601 et seq.). Effective February 1, 2013, the critical access hospital's payment is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (3) Ambulatory surgery fees: Ambulatory surgery center services are reimbursed at 79 percent of billed charges. Effective February 1, 2013, the ambulatory surgery center services are reimbursed at the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (4) Other rates: If a provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology, that amount or methodology establishes the applicable fee.
- (5) Payment levels frozen and reduced pending study of new fee schedule: Effective February 1, 2013, inpatient and outpatient payments for each hospital and the payments for each ambulatory surgery center shall be set at the payment rates in effect for those facilities as of June 30, 2012. Effective April 1, 2013, those rates shall then be reduced as follows:
- (A) Hospital outpatient and ambulatory surgery: The rate in effect as of that date shall be reduced by 15 percent.
- (B) Hospital inpatient: The minimum payment rate in effect as of that date shall be reduced by 10 percent.
- (6) Effective April 1, 2013, implants shall be paid at no greater than invoice cost plus 28 percent.

1 (e) Employers, insurers, and managed care organizations, or administrators on their behalf, may review and
2 reimburse charges for all medical compensation, including, but not limited to, medical, hospital, and dental fees,
3 without submitting the charges to the Commission for review and approval.

4 (ef) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of
5 the service, or if treatment is longer, within 30 days after the end of the month during which multiple treatments
6 were provided. However, in cases where liability is initially denied but subsequently admitted or determined by the
7 Commission, the time for submission of medical bills shall run from the time the health care provider received
8 notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer,
9 carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the
10 Commission for approval or send the provider written objections to the statement. If an employer, carrier,
11 administrator, or managed care organization disputes a portion of the provider's bill, the employer, carrier,
12 administrator, or managed care organization, shall pay the uncontested portion of the bill and shall resolve disputes
13 regarding the balance of the charges through its contractual arrangement or through the Commission.

14 (fg) Pursuant to G.S. 97-18(i), when the 10 percent addition to the bill is uncontested, payment shall be made to the
15 provider without notifying or seeking approval from the Commission. When the 10 percent addition to the bill is
16 contested, any party may request a hearing by the Commission pursuant to G.S. 97-83 and G.S. 97-84.

17 (gh) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the
18 payee hospital, upon request, shall provide reasonable access and copies of appropriate records, without charge or
19 fee, to the person(s) chosen by the payor to review and audit the records.

20 (hi) The responsible employer, carrier, managed care organization, or administrator shall pay the statements of
21 medical compensation providers to whom the employee has been referred by the treating physician authorized by
22 the insurance carrier for the compensable injury or body part, unless the physician has been requested to obtain
23 authorization for referrals or tests; provided that compliance with the request shall not unreasonably delay the
24 treatment or service to be rendered to the employee.

25 (ij) Employees are entitled to reimbursement for sick travel when the travel is medically necessary and the mileage
26 is 20 or more miles, round trip, at the business standard mileage rate set by the Internal Revenue Service per mile of
27 travel and the actual cost of tolls paid. Employees are entitled to lodging and meal expenses, at a rate to be
28 established for state employees by the North Carolina Director of Budget, when it is medically necessary that the
29 employee stay overnight at a location away from the employee's usual place of residence. Employees are entitled to
30 reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual
31 costs of the expenses.

32 (jk) Any employer, carrier or administrator denying a claim in which medical care has previously been authorized is
33 responsible for all costs incurred prior to the date notice of denial is provided to each health care provider to whom
34 authorization has been previously given.

35
36 *History Note:* Authority G.S. 97-18(i); 97-25; 97-25.6; 97-26; 97-80(a); 138-6;
37 *Eff. January 1, 1990;*

Amended Eff. July 1, 2014; January 1, 2013; June 1, 2000.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10L .0101

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 1, line 23, I take it your regulated public knows "Employer FEIN" is?

Since you are putting the form in Rule, please work with the publications coordinator to make sure it looks right. I am curious if on Page 2, line 20, will it really be "line" or should it read "Item 9"?

On Page 2, Item 12 – so, the parties will never agree to split the fee differently, like \$100 to be paid by the employee? The only two options are half and half and the employer pays the whole thing. Practically speaking, is that what happens?

On Page 3, I do not think you need the language on lines 30-34.

On Page 4, please tell the people that the form 18M (on line 6) which I assume is not needed to be adopted under S.L. 2013-294 Section 7, at the website.

On Page 4, shouldn't the name of the form on line 11 be italicized?

On Page 4, line 12, I think you mean to refer to Rule 04 NCAC 10A .0501 and that is the citation you need to use.

On Page 4, line 14, what is "good cause"? Define or give a reference to where it is defined.

In the History Note, please include a citation to G.S. 97-81(a), to make it clear for posterity that the form is supposed to be in Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10L .0101 is adopted as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

SUBCHAPTER 10L – INDUSTRIAL COMMISSION FORMS
SECTION .0100 – WORKERS’ COMPENSATION FORMS

04 NCAC 10L .0101 FORM 21 – AGREEMENT FOR COMPENSATION FOR DISABILITY

(a) The parties to a workers’ compensation claim shall use the following Form 21, *Agreement for Compensation for Disability*, for agreements regarding disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where applicable. The Form 21, *Agreement for Compensation for Disability*, shall read as follows:

North Carolina Industrial Commission
Agreement for Compensation for Disability
(G.S. 97-82)

IC File # _____
Emp. Code # _____
Carrier Code # _____
Carrier File # _____
Employer FEIN _____

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

Employee’s Name

Address

City _____ State _____ Zip _____

Home Telephone _____ Work Telephone _____

Social Security Number: _____ Sex: ☐ M ☐ F Date of Birth: _____

Employer's Name	Telephone Number
-----------------	------------------

Employer's Address City State Zip

Insurance Carrier

Carrier's Address City State Zip

Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and
is the carrier/administrator for the employer.

2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on or by _____

3. The injury by accident or occupational disease resulted in the following injuries:

4. The employee ☐ was/ ☐ was not paid for the entire day when the injury occurred.

5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances,
was \$ _____, subject to verification unless otherwise agreed upon in line 9 below.

6. Disability resulting from the injury or occupational disease began on _____

7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate
of \$ _____ per week beginning _____, and continuing for _____ weeks.

8. The employee ☐ has / ☐ has not returned to work for

on _____, at an average weekly wage of \$_____.

9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial disability:

10. If applicable, the Second Injury Fund Assessment is \$. Check ☐ is ☐ is not attached.

11. The date of this agreement is . Date of first payment: Amount:

12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.

Check one of the boxes below if the award is more than \$3,000.00:

☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

☐ The employee and employer have agreed that the employer will pay the entire fee.

Name Of Employer Signature Title

Name Of Carrier / Administrator Signature Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on the Pages 1 and 2 of this form.

Signature of Employee Address

Signature of Employee's Attorney Address

North Carolina Industrial Commission

The Foregoing Agreement Is Hereby Approved:

Claims Examiner Date

Attorney's Fee Approved

☐ Check Box If No Attorney Retained.

☐ Check Box If Employee Is In Managed Care.

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

1
2 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several
3 factors. Your right to payment of future medical compensation will terminate two years after your employer or
4 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think
5 you will need future medical compensation, you must apply to the Industrial Commission in writing within two
6 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M.

7
8 IMPORTANT NOTICE TO EMPLOYER

9
10 The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B,
11 Report Of Compensation And Medical Compensation Paid, within 16 days after last payment pursuant to this
12 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 501, within 20 days after
13 receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement
14 to the Industrial Commission, or show good cause for not submitting the agreement.

15
16 NEED ASSISTANCE?

17
18 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
19 (800) 688-8349.

20
21 Form 21
22 4/2014

23
24 Self-Insured Employer or Carrier, Mail to:
25 NCIC - Claims Section
26 4335 Mail Service Center
27 Raleigh, NC 27699-4335
28 Telephone: (919) 807-2502
29 Helpline: (800) 688-8349
30 **Website: <http://www.ic.nc.gov/>**

31
32 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed
33 at <http://www.ic.nc.gov/forms/form21.pdf>. The form may be reproduced only in the format available
34 at <http://www.ic.nc.gov/forms/form21.pdf> and may not be altered or amended in any way.

35
36 *History Note: Authority G.S. **97-73**; 97-80(a); 97-82;*
37 *Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10L .0102

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 1, line 24, I take it your regulated public knows "Employer FEIN" is?

On Page 2, Item 8, the parties will never agree to split the fee differently, like \$100 to be paid by the employee? The only two options are half and half and the employer pays the whole thing. Practically speaking, is that what happens?

On Page 3, I do not think you need the language on lines 23-26.

On Page 3, line 34, please tell the people that the form 18M, which I assume is not needed to be adopted under S.L. 2013-294 Section 7, can be found at the website.

On Page 4, lines 1 and 4, shouldn't the name of the form be italicized?

On Page 4, line 5, I think you mean to refer to Rule 04 NCAC 10A .0501 and that is the citation you need to use.

On Page 4, line 7, what is "good cause"? Define or give a reference to where it is defined.

In the History Note, please include a citation to G.S. 97-81(a), to make it clear for posterity that the form is supposed to be in Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10L .0102 is adopted as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

**04 NCAC 10L .0102 FORM 26 – SUPPLEMENTAL AGREEMENT AS TO PAYMENT OF
COMPENSATION**

(a) If the parties to a workers' compensation claim have previously entered into an approved agreement on a Form 21, Agreement for Compensation for Disability, or a Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, they shall use the following Form 26, Supplemental Agreement as to Payment of Compensation, for agreements regarding subsequent, additional disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where applicable. The Form 26, Supplemental Agreement as to Payment of Compensation, shall read as follows:

North Carolina Industrial Commission
Supplemental Agreement as to Payment
of Compensation (G.S. §97-82)

IC File # _____
Emp. Code # _____
Carrier Code # _____
Carrier File # _____
Employer FEIN _____

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

Employee's Name

Address

City State Zip

Home Telephone Work Telephone
Social Security Number: Sex: ☐ M ☐ F Date of Birth:

Employer's Name Telephone Number

Employer's Address City State Zip

Insurance Carrier

Carrier's Address City State Zip

Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

1. Date of injury: _____

2. The employee ☐ returned to work / ☐ was rated on _____ (date), at a weekly wage of \$ _____.

3. The employee became totally disabled on _____.

4. Employee's average weekly wage ☐ was reduced / ☐ was increased on _____, from \$ _____
per week to \$ _____ per week.

5. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate
of \$ _____ per week

Beginning _____, and continuing for _____ weeks. The type of disability compensation is

6. State any further matters agreed upon, including disfigurement or temporary partial disability:

7. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.

Check one of the boxes below if the award is more than \$3,000.00:

☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

☐ The employee and employer have agreed that the employer will pay the entire fee.

8. The date of this agreement is _____.

Name Of Employer Signature Title

Name Of Carrier/Administrator Signature Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Pages 1 and 2 of this form.

Signature of Employee Address

Signature of Employee's Attorney Address

☐ Check box if no attorney retained.

North Carolina Industrial Commission

The Foregoing Agreement Is Hereby Approved:

Claims Examiner Date

Attorney's fee approved

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE 5 JULY 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before 5 July 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER 5 JULY 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after 5 July 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M.

IMPORTANT NOTICE TO EMPLOYER

1 This form is to be used only to supplement Form 21, Agreement for Compensation for Disability (G.S. 97-82), or an
2 award in cases in which subsequent conditions require a modification of a former agreement or award. The
3 employee must be provided a copy of the form when the agreement is signed by the employee. Failure to file Form
4 28B, Report of Compensation and Medical Compensation Paid, within 16 days after last payment pursuant to this
5 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 501, within 20 days
6 after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the
7 agreement to the Industrial Commission, or show good cause for not submitting the agreement.

8
9 NEED ASSISTANCE?

10
11 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
12 (800) 688-8349.

13
14 Form 26
15 4/2014

16
17 Self-Insured Employer or Carrier Mail to:
18 NCIC - Claims Administration
19 4335 Mail Service Center
20 Raleigh, North Carolina 27699-4335
21 Main Telephone: (919) 807-2500
22 Helpline: (800) 688-8349
23 Website: <http://www.ic.nc.gov/>

24
25 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed at
26 <http://www.ic.nc.gov/forms/form26.pdf>. The form may be reproduced only in the format available at
27 <http://www.ic.nc.gov/forms/form26.pdf> and may not be altered or amended in any way.

28
29 *History Note: Authority G.S. 97-73; 97-80(a); 97-82;*
30 *Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10L .0103

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 1, line 23, I take it your regulated public knows "Employer FEIN" is?

On Page 3, Item 12, the parties will never agree to split the fee differently, like \$100 to be paid by the employee? The only two options are half and half and the employer pays the whole thing. Practically speaking, is that what happens?

On Page 4, I do not think you need the language on lines 7-10.

On Page 4, line 18, please tell the people that the form 18M, which I assume is not needed to be adopted under S.L. 2013-294 Section 7, can be found at the website.

On Page 4, line 21, shouldn't the name of the form be italicized?

On Page 4, line 23, I think you mean to refer to Rule 04 NCAC 10A .0501 and that is the citation you need to use.

On Page 4, line 25, what is "good cause"? Define or give a reference to where it is defined.

In the History Note, please include a citation to G.S. 97-81(a), to make it clear for posterity that the form is supposed to be in Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10L .0103 is adopted as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

04 NCAC 10L .0103 FORM 26A – Employer’s Admission of Employee’s Right to Permanent Partial Disability

(a) The parties to a workers’ compensation claim shall use the following Form 26A, *Employer’s Admission of Employee’s Right to Permanent Partial Disability*, for agreements regarding the employee’s entitlement to and the employer’s payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues agreed upon by the parties, including, but not limited to, election of payment of temporary partial disability pursuant to G.S. 97-30 may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where applicable. The Form 26A, *Employer’s Admission of Employee’s Right to Permanent Partial Disability*, shall read as follows:

North Carolina Industrial Commission

Employer’s Admission of Employee’s Right to Permanent Partial Disability
(G.S. §97-31)

IC File # _____

Emp. Code # _____

Carrier Code # _____

Carrier File # _____

Employer FEIN _____

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

Employee’s Name

Address

City State Zip

Home Telephone Work Telephone

Social Security Number: Sex: ☐ M ☐ F Date of Birth:

Employer's Name	Telephone Number
-----------------	------------------

Employer's Address City State Zip

Insurance Carrier

Carrier's Address City State Zip

Carrier's Telephone Number Carrier's Fax Number

WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and _____ is the Carrier/Administrator for the Employer.
2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on _____.
3. The injury by accident or occupational disease resulted in the following injuries:
_____.
4. The employee ☐ was ☐ was not paid for the 7 day waiting period.

If not, was salary continued? ☐ yes ☐ no. Was employee paid for the date of injury? ☐ yes ☐ no

5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances,
was \$_____. This results in a weekly compensation rate of \$_____.
6. The employee ☐ has ☐ has not returned full time to work for _____
_____ at an average weekly wage of \$_____.
7. Claimant was released ☐ with permanent restrictions ☐ without permanent restrictions.
8. Permanent partial disability compensation will be paid to the injured worker as follows:

_____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)

_____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)

_____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)

Total amount of permanent partial disability compensation is \$. Date of first payment: .

9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other:

10. An overpayment is claimed in the amount of \$. Overpayment was calculated as follows:

If overpayment claimed, a Form 28B is attached. ☐ yes ☐ no

11. If applicable, the Second Injury Fund Assessment is \$. A check ☐ is ☐ is not included.

12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.

Check one of the boxes below if the award is more than \$3,000.00:

☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

☐ The employee and employer have agreed that the employer will pay the entire fee.

The undersigned hereby certify that the material medical and vocational reports related to the injury have been provided to the employee or his attorney and have been filed with the Industrial Commission for consideration pursuant to G.S. 97-82(a) and Industrial Commission Rule 501(3).

Name Of Employer	Signature	Title	Date
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Name Of Carrier/Administrator	Signature	Direct Phone Number	Title	Date
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By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on pages 2 and 3 of this form.

Signature of Employee	Address	Date
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Signature of Employee's Attorney	Address	Date
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☐ Check box if no attorney retained.

North Carolina Industrial Commission

The Foregoing Agreement Is Hereby Approved:

Claims Examiner	Date
-----------------	------

Attorney's fee approved

1 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM
2 PAYMENTS

3 Once your compensation checks have been stopped, if you claim further compensation, you must notify the
4 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your
5 rights to these benefits may be lost.

7 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL
8 MEDICAL BENEFITS

9 If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably
10 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

12 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL
13 MEDICAL BENEFITS

14 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several
15 factors. Your right to payment of future medical compensation will terminate two years after your employer or
16 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think
17 you will need future medical compensation, you must apply to the Industrial Commission in writing within two
18 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M.

20 IMPORTANT NOTICE TO EMPLOYER

21 The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B,
22 Report Of Compensation And Medical Compensation Paid, within 16 days after last payment pursuant to this
23 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 501, within 20 days after
24 receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement
25 to the Industrial Commission, or show good cause for not submitting the agreement.

27 NEED ASSISTANCE?

28 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
29 (800) 688-8349.

31 Form 26A

32 1/2014

34 Self-Insured Employer or Carrier Mail to:

35 NCIC - Claims Administration

36 4335 Mail Service Center

37 Raleigh, North Carolina 27699-4335

1 Main Telephone: (919) 807-2500

2 Helpline: (800) 688-8349

3 Website: <http://www.ic.nc.gov/>

4
5 (b) A copy of the form described in Paragraph (a) of this Rule can be accessed

6 at <http://www.ic.nc.gov/forms/form26a.pdf>. The form may be reproduced only in the format available

7 at <http://www.ic.nc.gov/forms/form26a.pdf> and may not be altered or amended in any way.

8
9 *History Note:* Authority G.S. 97-30; 97-31; **97-73**; 97-80(a); 97-82;

10 *Eff. April 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10L .0104

DEADLINE FOR RECEIPT: Monday, March 17, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 1, line 31, shouldn't that be indented?

I realize that the goal here is to reproduce a subpoena from the AOC form as nearly as possible. But on Page 2, line 20, do you need to retain language about criminal cases?

And do you feel that you need to retain the language from Rule 45 of the Rules of Civil Procedure, rather than just incorporating it by reference? Do you feel that stating the Rule of Civil Procedure better serves your public than a reference?

Further, I think the "Note" on Page 5, lines 12 -15, needs to be moved to the language after line 21. And please state "Rule 04 NCAC 10A .0609"

On Page 3, 11 and Page 4, line 26, you need to add "of the North Carolina Rules of Civil Procedure."

On Page 3, lines 13-18 need to be indented. Technically, all of (c)(1) through (8) and (d)(1) through (5) should be indented, but please work with our publications coordinator on the formatting.

Also, I know you are just reciting the form, but I do not think you need a period and a hyphen after the introductory statement in (c)(1) through (8) and (d)(1) through (5).

In the History Note, please include a citation to G.S. 97-81(a) and S.L. 2013-294, Section 8(12) to make it clear for posterity that the form of the subpoena is supposed to be in Rule.

In addition, please amend the citations to 97-80 in the History Note to read "97-80(a); 97-80(e);"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 13, 2014

Rule 04 NCAC 10L .0104 is adopted as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

04 NCAC 10L .0104 FORM 36 – SUBPOENA

(a) The parties to a claim shall use the following Form 36, *Subpoena*, to subpoena a person(s) to appear and testify and/or produce documents for inspection before the Commission. The Form 36, *Subpoena*, shall read as follows:

STATE OF NORTH CAROLINA File No. _____
County North Carolina Industrial Commission

VERSUS

SUBPOENA

G.S. 1A-1, Rule 45; G.S. 8-59; G.S. 97-80(e)

Party Requesting Subpoena

NCIC/State/Plaintiff Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by a Commissioner, Deputy Commissioner, or the Executive Secretary.

TO: Name and Address Of Person Subpoenaed _____

Alternate Address _____

Telephone No. _____

Alternate Telephone No. _____

YOU ARE COMMANDED TO: (check all that apply):

appear and testify, in the above entitled action, before the Industrial Commission at the place, date and time indicated below.

appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.

produce and permit inspection and copying of the following items, at the place, date and time indicated below. (A party shall not issue a subpoena duces tecum less than 30 days prior to the hearing date except upon prior approval of the Commission. G.S. 97-80(e).)

See attached list. (List here if space sufficient)

Location Of Hearing/Place Of Deposition/Place To Produce _____

Date To Appear/Produce _____

Time To Appear/Produce : AM PM

Name And Address Of Applicant Or Applicant's Attorney _____

Date _____

Signature of Official or Attorney _____
Deputy Commissioner Commissioner Executive Secretary Attorney
Telephone No. Of Applicant Or Applicant's Attorney _____

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

By _____
_____ personal delivery.
_____ registered or certified mail, receipt requested and attached.
_____ service by Sheriff.

_____ I was unable to serve this subpoena. Reason unable to serve: _____

Service Fee \$ _____

___ Paid

___ Due

Date Served _____

Name Of Authorized Server (Type Or Print) _____

Signature of Authorized Server _____

Title _____

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).

(c) Protection of Persons Subject to Subpoena

(1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or

1 proceeding without further certification or authentication. Copies of hospital medical records tendered under this
2 subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings
3 and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing
4 contained herein shall be construed to waive the physician-patient privilege or to require any privileged
5 communication under law to be disclosed.

6 (3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a
7 deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically
8 stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified
9 for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the
10 subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written
11 objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for
12 objecting to a subpoena:

13 a. The subpoena fails to allow reasonable time for compliance.

14 b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the
15 privilege or protection.

16 c. The subpoena subjects a person to an undue burden or expense.

17 d. The subpoena is otherwise unreasonable or oppressive.

18 e. The subpoena is procedurally defective.

19 (4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the
20 party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to
21 inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection
22 is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to
23 compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the
24 subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is
25 to occur.

26 (5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to
27 produce and permit the inspection and copying of records, books, papers, documents, electronically
28 stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified
29 for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The
30 court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons
31 set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial,
32 hearing, deposition, or production of materials is to occur.

33 (6) Order to compel; expenses to comply with subpoena. - When a court enters an order compelling a deposition or
34 the production of records, books, papers, documents, electronically stored information, or other tangible things, the
35 order shall protect any person who is not a party or an agent of a party from significant expense resulting from
36 complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be

1 reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored
2 information, or tangible things specified in the subpoena.

3 (7) Trade secrets; confidential information. - When a subpoena requires disclosure of a trade secret or other
4 confidential research, development, or commercial information, a court may, to protect a person subject to or
5 affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued
6 shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the
7 court may order a person to make an appearance or produce the materials only on specified conditions stated in the
8 order.

9 (8) Order to quash; expenses. - When a court enters an order quashing or modifying the subpoena, the court may
10 order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable
11 expenses including attorney's fees.

12 (d) Duties in Responding to Subpoena

13 (1) Form of response. - A person responding to a subpoena to produce records, books, documents, electronically
14 stored information, or tangible things shall produce them as they are kept in the usual course of business or shall
15 organize and label them to correspond with the categories in the request.

16 (2) Form of producing electronically stored information not specified. - If a subpoena does not specify a form for
17 producing electronically stored information, the person responding must produce it in a form or forms in which it
18 ordinarily is maintained or in a reasonably useable form or forms.

19 (3) Electronically stored information in only one form. - The person responding need not produce the same
20 electronically stored information in more than one form.

21 (4) Inaccessible electronically stored information. - The person responding need not provide discovery of
22 electronically stored information from sources that the person identifies as not reasonably accessible because of
23 undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show
24 that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court
25 may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the
26 limitations of Rule 26(b)(1a). The court may specify conditions for discovery, including requiring the party that
27 seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the
28 electronically stored information involved.

29 (5) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject
30 to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with
31 specificity and shall be supported by a description of the nature of the communications, records, books, papers,
32 documents, electronically stored information, or other tangible things not produced, sufficient for the requesting
33 party to contest the objection.

34 INFORMATION FOR WITNESS

35 NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on
36 Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

37 DUTIES OF A WITNESS

- 1 • Unless otherwise directed by the presiding Deputy Commissioner or Commissioner, you must answer all
- 2 questions asked when you are on the stand giving testimony.
- 3 • In answering questions, speak clearly and loudly enough to be heard.
- 4 • Your answers to questions must be truthful.
- 5 • If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- 6 • You must continue to attend court until released by the court. You must continue to attend a deposition
- 7 until the deposition is completed.

8 BRIBING OR THREATENING A WITNESS

9 It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone
10 attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report
11 that to the presiding Deputy Commissioner or Commissioner.

12 NOTE REGARDING RULE 45 ABOVE

13 With respect to the provisions of Rule 45 cited above as they apply to this subpoena, the North Carolina Industrial
14 Commission is the “court” and the “court in the county.” All motions regarding this subpoena shall be filed with the
15 North Carolina Industrial Commission pursuant to 04 NCAC 10A .0609.

16
17 Form 36 (Rev. [4/14])

18
19 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed
20 at <http://www.ic.nc.gov/forms/form36.pdf>. The form may be reproduced only in the format available
21 at <http://www.ic.nc.gov/forms/form36.pdf> and may not be altered or amended in any way.

22
23 *History Note: Authority G.S. 1A-1, Rule 45; 8-59; 97-80(a),(e);*
24 *Eff. April 1, 2014.*