

1 Rule 04 NCAC 10A .0601 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 .0600 – CLAIMS ADMINISTRATION AND PROCEDURES**

5
6 **04 NCAC 10A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND**
7 **SANCTIONS**

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

11 ~~(b)(a) When an~~ Upon the employee's ~~employee files~~ filing of a claim for compensation with the Commission, the
12 Commission may order **reasonable** sanctions **pursuant to G.S. 97-18(j)** against the employer or its insurance
13 carrier ~~which~~ if it does not, within 30 days following notice from the Commission of the filing of the claim, or 90
14 days when a disease is alleged to be from exposure to chemicals, fumes, or other materials or substances in the
15 workplace, ~~or within such reasonable additional time as the Commission may allow,~~ do one of the following:

- 16 (1) ~~Notify~~ **File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify** the
17 Commission and the employee in writing that ~~it~~ **the employer** is admitting the employee's right to
18 compensation and, if applicable, satisfy the requirements for payment of compensation under G.S.
19 **[97-18(b).] 97-18(b):**
- 20 (2) ~~Notify~~ **File a Form 61 *Denial of Workers' Compensation Claim* to notify** the Commission and the
21 employee that ~~it~~ **the employer** denies the employee's right to compensation consistent with G.S.
22 **[97-18(c).] 97-18(c):**
- 23 (3) **File a Form 63 *Notice to Employee of Payment of Compensation Without Prejudice* Initiate**
24 ~~payments without prejudice and without liability and satisfy the requirements of~~ **consistent with**
25 G.S. 97-18(d).

26 **For purposes of this Rule, reasonable sanctions ordered pursuant to G.S. 97-18(j) shall not prohibit the employer or**
27 **its insurance carrier from contesting the compensability of and its liability for the claim.**

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

30 ~~(e)(b) If the employer or insurance carrier denies~~ **When** liability in any ~~ease,~~ **case is denied, the employer or**
31 **insurance carrier shall provide** a detailed statement of the basis of denial ~~must~~ **that shall** be set forth in a letter of
32 denial or Form ~~64,~~ **61 *Denial of Workers' Compensation Claim*, and** ~~which~~ **that** shall be sent to the ~~plaintiff or~~
33 ~~his~~ **employee's** attorney of ~~record, if any~~ **record** or the employee, if unrepresented, all known health care
34 providers ~~which~~ **who** have submitted bills **and provided medical records** to the ~~employer/carrier,~~ **employer or carrier,**
35 and the **Industrial Commission.** ~~The detailed statement of the basis of denial shall set forth a statement of the facts,~~
36 ~~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.*

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~~

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

3 ~~(b) Emergency Medical Motions:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 representation with the Docket Director at dockets@ic.nc.gov [with] and send a copy of the notice [sent] to all other
2 counsel and all other unrepresented parties involved in the proceeding.

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

- 5 (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25;
- 6 (2) the claimant's ~~[name]~~ name. ~~[and, if]~~ If the claimant is unrepresented, claimant's email address,
7 telephone number, and fax number. If the claimant is represented, the name, email address,
8 telephone number and fax number of claimant's counsel;
- 9 (3) the employer's name and employer code;
- 10 (4) the carrier or third party administrator's name, carrier code, email address, telephone number and
11 fax number;
- 12 (5) the adjuster's name, email address, telephone number and fax number if counsel for
13 the ~~[employer/carrier]~~ employer and carrier has not been retained;
- 14 (6) the counsel for ~~[employer/carrier's]~~ employer and carrier's name, email address, telephone
15 number and fax number;
- 16 (7) a statement of the treatment or relief requested;
- 17 (8) a statement of the medical diagnosis of claimant and the treatment recommendation and name of
18 the health care provider that is the basis for the motion;
- 19 (9) a statement as to whether the claim has been admitted on a Form 60, Form 63, Form 21 or is
20 subject to a prior Commission Opinion and Award or Order finding ~~[compensability]~~
21 compensability, with supporting documentation attached;
- 22 (10) a statement of the time-sensitive nature of the request;
- 23 (11) an explanation of opinions known and in the possession of the employee of additional medical or
24 other relevant experts, independent medical examiners, and second opinion examiners;
- 25 (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall
26 specify whether the plaintiff has made a prior written request to the defendants for the
27 examination, as well as the date of the request and the date of the denial, if any;
- 28 (13) a representation that informal means of resolving the issue have been attempted in good faith, and
29 the opposing party's position, if known; and
- 30 (14) a proposed Order.

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

- 32 (1) a boldface or otherwise emphasized, designation as "Emergency Medical Motion";
- 33 (2) the claimant's ~~[name]~~ name. ~~[and, if]~~ If the claimant is unrepresented, claimant's email address,
34 telephone number, and fax number. If the claimant is represented, the name, email address,
35 telephone number and fax number of claimant's counsel;
- 36 (3) the employer's name and employer code;

- 1 (4) the carrier or third party administrator's name, carrier code, email address, telephone number and
2 fax number;
- 3 (5) the adjuster's name, email address, telephone number and fax number if counsel for the
4 employer/carrier has not been retained;
- 5 (6) the counsel for employer/carrier's name, email address, telephone number and fax number;
- 6 (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider
7 that requires emergency attention;
- 8 (8) a statement of the need for a shortened time period for review, including relevant dates and the
9 potential for adverse consequences if the recommended treatment is not provided emergently;
- 10 (9) an explanation of opinions known and in the possession of the employee of additional medical or
11 other relevant experts, independent medical examiner, and second opinion examiners;
- 12 (10) a representation that informal means of resolving the issue have been attempted in good faith, and
13 the opposing party's position, if known; ~~and~~
- 14 (11) documentation known and in the possession of the employee in support of the request, including
15 relevant medical records; and
- 16 ~~(11)~~(12) a proposed Order.

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

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

27 (h) Depositions deemed necessary by the Deputy Commissioner shall be taken on the Deputy Commissioner's order
28 within 35 days of the date the motion is filed. Transcripts of depositions shall be submitted electronically to the
29 Commission within 40 days of the date of the filing of the motion. The Deputy Commissioner may reduce or enlarge
30 the timeframe contained in this Paragraph for good cause shown.

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

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

36 (k) A party may appeal a Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 by giving
37 notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of the ruling on a Motion to

1 Reconsider the Order filed pursuant to Rule .0703(b) of this Subchapter. A letter expressing an intent to appeal a
2 Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 shall be considered notice of appeal to
3 the Full Commission, provided that the letter [~~specifies~~] **specifically identifies** the Order from which appeal is taken.
4 After receipt of notice of appeal, the appeal shall be acknowledged by the Docket Section within three days by
5 sending an Order under the name of the Chair of the Panel to which the appeal is assigned. [~~The parties may file~~
6 ~~briefs on an abbreviated schedule when necessary for a determination of the issues.~~] **The Order shall indicate**
7 **whether the parties may file briefs and the schedule for filing them.** **At the time the motion is set for informal**
8 **hearing, [The] the [~~panel chair~~] Chair of the Panel shall also [~~determine~~] **indicate to the parties** if oral arguments are**
9 to be by telephone, in person, or waived. All correspondence, briefs, or motions related to the appeal shall be
10 addressed to the [~~panel chair~~] **Chair of the Panel** with a copy to [~~the~~] **his or her** law [~~clerk of the panel chair.~~]
11 (l) The Commission [~~will~~] **shall** accept the filing of documents by non-electronic methods if electronic transmission
12 is unavailable to the party.

13

14 *History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a);*
15 *Eff. January 1, 2011;*
16 *Amended Eff. April 1, 2014.*

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] shall file a
8 motion with the Commission that complies with the requirements of N.C. Gen. Stat. § 84-4.1. [If the *pro hac vice*
9 motion is filed in a case involving a stipulated Opinion and Award regarding a death claim, the motion shall be filed
10 with the Chief Deputy Commissioner.] The North Carolina attorney with whom the out-of-state attorney associates
11 pursuant to N.C. Gen. Stat. § 84-4.1(5) may [also] file the [motion.] motion instead as long as it complies with the
12 requirements of N.C. Gen. Stat. § 84-4.1.

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

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

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

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

22 (c) A proposed Order granting *pro hac vice* admission that includes the facsimile numbers for all counsel of record
23 shall be provided with the motion.

24 (d) Following review of the motion, the Commission shall issue an Order granting or denying the motion. The
25 Commission has the discretionary authority to deny such motions even if they comply with the requirements of N.C.
26 Gen. Stat. § 84-4.1

27 ~~(d)~~(e) Upon receipt of an Order granting a motion for *pro hac vice* admission, the admitted attorney or the
28 associated North Carolina attorney shall pay [Following the payment of] the fees to the North Carolina State Bar and
29 General Court of Justice [as] required by N.C. Gen. Stat. § [84-4.1, the out of state attorney or the associated North
30 Carolina attorney shall] and file a statement with the Executive Secretary documenting payment of said fees and the
31 submission of any *pro hac vice* admission registration statement required by the North Carolina State Bar.

32
33 *History Note:* Authority G.S. 84-4.1; 97-80(a);
34 Eff. April 1, 2014.

1 Rule 04 NCAC 10E .0104 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 .0104 SECURE LEAVE PERIODS FOR ATTORNEYS**

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

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

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

18 (d) The request shall contain the following information:

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

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

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

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

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

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

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

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

33 An untimely request will be automatically denied by letter. In the event that a party has been denied secure leave
34 because the request was not timely filed and there are extraordinary circumstances, the attorney may file a motion
35 requesting an exception. If the case has been scheduled for hearing before a Deputy Commissioner, the motion shall
36 be addressed to the Deputy Commissioner. If the matter is scheduled for hearing before the Full Commission, the

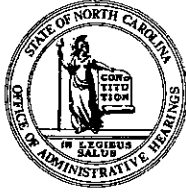
1 motion shall be addressed to the ~~chair of the panel~~ Chair of the Panel before which the hearing will be held. In all
2 other cases, the motion should be directed to the Office of the Chair.

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

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

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

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



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 21, 2014

Meredith Henderson
Industrial Commission
Sent via email to Meredith.Henderson@in.nc.gov

Re: Objections to Rules 04 NCAC 10A .0601, .0609A; and
10E .0103, .0104.

Dear Ms. Henderson:

At its meeting yesterday, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 04 NCAC 10A .0601, finding the deletion of the language in Paragraph (a) relating to the reasonable sanctions not prohibiting the employer or the carrier from contesting compensability and liability for the claim creates ambiguity by appearing to abrogate statutory requirements.

The Commission objected to Rule 04 NCAC 10A .0609A, finding the Industrial Commission lacks authority in Paragraph (h) of the Rule to set a specific timeframe for depositions and transcripts of the same without allowing the Deputy Commissioners to reduce or enlarge that period of time, as set forth in G.S. 97-25(g).

The Commission objected to Rule 04 NCAC 10E .0103 based upon ambiguity. The rule language was unclear what actions the Industrial Commission would take after receiving an application for *pro hac vice* admission.

The Commission objected to Rule 04 NCAC 10E .0104 based upon ambiguity. The Commission found that the rule language as submitted was unclear regarding the process for attorneys to request and take secured leave.

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

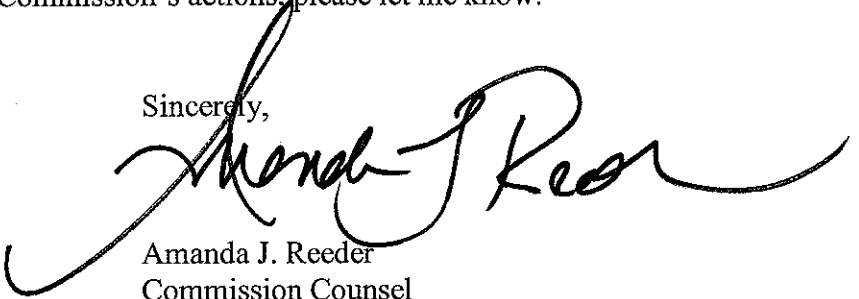
Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda J. Reeder". The signature is fluid and cursive, with a large initial "A" and "R".

Amanda J. Reeder
Commission Counsel

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4 **SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES**

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6 **04 NCAC 10A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND**
7 **SANCTIONS**

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

11 ~~(b)(a) When an~~ Upon the employee's ~~employee files~~ filing of a claim for compensation with the Commission, the
12 Commission may order reasonable sanctions against the employer or its insurance carrier ~~which if it does not~~, within
13 30 days following notice from the Commission of the filing of the claim, or 90 days when a disease is alleged to be
14 from exposure to chemicals, fumes, or other materials or substances in the workplace, ~~or within such reasonable~~
15 ~~additional time as the Commission may allow~~, do one of the following:

- 16 (1) ~~Notify~~ File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify the
17 Commission and the employee in writing that ~~the employer~~ is admitting the employee's right to
18 compensation and, if applicable, satisfy the requirements for payment of compensation under G.S.
19 97-18(b);
- 20 (2) ~~Notify~~ File a Form 61 *Denial of Workers' Compensation Claim* to notify the Commission and the
21 employee that ~~the employer~~ denies the employee's right to compensation consistent with G.S.
22 97-18(c);
- 23 (3) File a Form 63 *Notice to Employee of Payment of Compensation Without Prejudice* Initiate
24 payments without prejudice and without liability and satisfy the requirements of consistent with
25 G.S. 97-18(d).

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

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

30 ~~(c)(b) If the employer or insurance carrier denies~~ When liability in any case, case is denied, the employer or
31 insurance carrier shall provide a detailed statement of the basis of denial ~~must that shall~~ shall be set forth in a letter of
32 denial or Form ~~61, 61~~ 61 *Denial of Workers' Compensation Claim*, and which that shall be sent to the ~~plaintiff or~~
33 ~~his employee's~~ attorney of record, ~~if any record or the employee, if unrepresented~~, all known health care
34 providers ~~which who~~ who have submitted bills and provided medical records to the ~~employer/carrier, employer or carrier,~~
35 and the Industrial Commission. ~~The detailed statement of the basis of denial shall set forth a statement of the facts,~~
36 ~~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.*

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~~

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

3 ~~(b) Emergency Medical Motions:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25;

6 (2) the claimant's name and, if unrepresented, claimant's email address, telephone number, and fax
7 number. If represented, the name, email address, telephone number and fax number of claimant's
8 counsel;

9 (3) the employer's name and employer code;

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

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

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

15 (7) a statement of the treatment or relief requested;

16 (8) a statement of the medical diagnosis of claimant and the treatment recommendation and name of
17 the health care provider that is the basis for the motion;

18 (9) a statement as to whether the claim has been admitted on a Form 60, Form 63, Form 21 or is
19 subject to a prior Commission Opinion and Award or Order finding compensability, with
20 supporting documentation attached;

21 (10) a statement of the time-sensitive nature of the request;

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

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

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

29 (14) a proposed Order.

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

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

32 (2) the claimant's name and, if unrepresented, claimant's email address, telephone number, and fax
33 number. If represented, the name, email address, telephone number and fax number of claimant's
34 counsel;

35 (3) the employer's name and employer code;

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

- 1 (5) the adjuster's name, email address, telephone number and fax number if counsel for the
2 employer/carrier has not been retained;
- 3 (6) the counsel for employer/carrier's name, email address, telephone number and fax number;
- 4 (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider
5 that requires emergency attention;
- 6 (8) a statement of the need for a shortened time period for review, including relevant dates and the
7 potential for adverse consequences if the recommended treatment is not provided emergently;
- 8 (9) an explanation of opinions known and in the possession of the employee of additional medical or
9 other relevant experts, independent medical examiner, and second opinion examiners;
- 10 (10) a representation that informal means of resolving the issue have been attempted in good faith, and
11 the opposing party's position, if known; and
- 12 (11) a proposed Order.

13 (f) The parties shall receive notice of the date and time of an initial informal telephonic conference to be conducted
14 by a Deputy Commissioner to determine whether the motion warrants an expedited or emergency hearing and to
15 clarify the issues. During the initial informal telephonic conference each party shall be afforded an opportunity to
16 state its position and submit documentary evidence. [Prior to the initial informal telephonic conference, the parties
17 shall submit a brief medical chronology and procedural history of three pages or less, the relevant Form 60, Form
18 63, Form 21 or Commission Opinion and Award, and relevant medical information including medical records.]

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

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

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

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

29 (k) A party may appeal a Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 by giving
30 notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of the ruling on a Motion to
31 Reconsider the Order filed pursuant to Rule .0703(b) of this Subchapter. A letter expressing an intent to appeal a
32 Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 shall be considered notice of appeal to
33 the Full Commission, provided that the letter specifies the Order from which appeal is taken. After receipt of notice
34 of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order under the
35 name of the Chair of the Panel to which the appeal is assigned. The parties may file briefs on an abbreviated
36 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.*

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.*

1 Rule 04 NCAC 10E .0104 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 10E .0104 SECURE LEAVE PERIODS FOR ATTORNEYS**

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

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

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

17 (d) The request shall contain the following information:

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

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

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

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

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

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

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

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

32 An untimely request will be automatically denied by letter. In the event that a party has been denied secure leave
33 because the request was not timely filed and there are extraordinary circumstances, the attorney may file a motion
34 requesting an exception. If the case has been scheduled for hearing before a Deputy Commissioner, the motion shall
35 be addressed to the Deputy Commissioner. If the matter is scheduled for hearing before the Full Commission, the
36 motion shall be addressed to the chair of the panel before which the hearing will be held. In all other cases, the
37 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.*