

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Industrial Commission

RULE CITATION: 04 NCAC 10A

DEADLINE FOR RECEIPT: December 14, 2015

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

In general as to all of these rules, please note:

Forms: the APA requires the substantive contents of forms to be in either Rules or law. Wherever you refer to forms, you need to either state the contents of the form in the Rule or be able to show rules/law where the content is required. In addition, the rule should also state, with specificity, where the forms may be obtained.

Commission and Full Commission: in several rules, reference is made to the "Full Commission." Is the "Full Commission" different from the "Commission"? If not, please consider replacing "Full Commission" with "Commission" throughout your rules.

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: November 30, 2015

1 04 NCAC 10A .0101 is amended as published in 30:6 NCR 593-602 as follows:

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CHAPTER 10 - INDUSTRIAL COMMISSION

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SUBCHAPTER 10A - WORKERS' COMPENSATION RULES

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SECTION .0100 - ADMINISTRATION

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04 NCAC 10A .0101 LOCATION OF ~~OFFICES~~ MAIN OFFICE AND HOURS OF BUSINESS

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The ~~offices~~ main office of the North Carolina Industrial Commission ~~are~~ is located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not being filed electronically may be filed at the main office between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

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

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Eff. January 1, 1990;

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Amended Eff. January 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000.

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Industrial Commission

RULE CITATION: 04 NCAC 10A .0108

DEADLINE FOR RECEIPT: December 14, 2015

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Note the general comment regarding forms, above.

Page 3, line 28 – replace “Forms” with “Form” unless 25N consists of more than one form.

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: November 30, 2015

1 04 NCAC 10A .0108 is adopted as published in 30:6 NCR 593-602 as follows:

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04 NCAC 10A .0108 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

(a) All documents filed with the Commission in workers’ compensation cases shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Any document filed with the Commission which requires contemporaneous payment of a processing fee pursuant to Rule 04 NCAC 10E .0203 shall not be deemed filed until the fee has been paid in full. The electronic filing requirements of this Rule shall not apply to claimants and employers without legal representation. Claimants and employers without legal representation may file documents with the Commission via EDFP, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) All documents listed in Table 1 below shall be transmitted to the Commission via the Commission’s Electronic Document Filing Portal (“EDFP”). Information regarding how to register for and use EDFP is available at <http://www.ic.nc.gov/training.html>. In the event EDFP is inoperable, all documents listed in Table 1 below shall be sent to the Commission via electronic mail to edfp@ic.nc.gov. Documents listed in Table 1 below which are sent to the Commission via electronic mail when EDFP is operable shall not be accepted for filing.

Table 1: Documents to be filed via EDFP

<u>Appeal of Administrative Order to Full Commission</u>
<u>Appeal of Medical Motion Order to Full Commission</u>
<u>Appeal of Opinion and Award of Deputy Commissioner</u>
<u>Appeal of Order of Executive Secretary (Non-Medical)</u>
<u>Attorney Representation Letter</u>
<u>Brief to the Full Commission</u>
<u>Brief or Contentions</u>
<u>Compromise Settlement Agreement</u>
<u>Confirmation of Scheduling of Mediation</u>
<u>Court of Appeals – Notice of Appeal</u>
<u>Deposition</u>
<u>Form 18M</u>
<u>Form 21</u>
<u>Form 23 Application</u>
<u>Form 23 Response</u>
<u>Form 23 Additional Documentation</u>
<u>Form 24 Application</u>
<u>Form 24 Response</u>
<u>Form 24 Additional Documentation</u>

<u>Form 26</u>
<u>Form 26A</u>
<u>Form 33</u>
<u>Form 33R</u>
<u>Form 44</u>
<u>MSC2</u>
<u>MSC4</u>
<u>MSC5</u>
<u>Pre-trial Agreement</u>
<u>Notice of Scheduled Mediation</u>

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2 Transcripts of depositions shall be filed with the Commission pursuant to this Paragraph by the court reporting service.
3 The transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The
4 parties shall provide the court reporting service with the information necessary to effectuate electronic filing of the
5 deposition transcripts and attached exhibits. If an exhibit to a deposition is in a form that makes submission of an
6 electronic copy impracticable, counsel for the party offering the exhibit shall make arrangements with the Commission
7 to facilitate the submission of the exhibit. Condensed transcripts and paper copies of deposition transcripts shall not
8 be accepted for filing.

9 (c) The workers' compensation forms listed in Table 2 below and all other documents to be filed with the
10 Commission's Claims Administration Section shall be sent to the Commission via electronic mail to forms@ic.nc.gov.

11
12 Table 2: Forms to be filed via electronic mail to forms@ic.nc.gov

<u>Form 18</u>
<u>Form 18B</u>
<u>Form 26D</u>
<u>Form 28</u>
<u>Form 28B</u>
<u>Form 28C</u>
<u>Form 28T</u>
<u>Form 29</u>
<u>Form 30</u>
<u>Form 30A</u>
<u>Form 30D</u>
<u>Form 31</u>
<u>Form 60</u>
<u>Form 61</u>

Form 62

Form 63

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2 (d) Motions, motion responses, and all other documents not referenced in Paragraphs (b) and (c) of this Rule shall be
3 filed with the Commission via electronic mail in accordance with Subparagraphs (1) through (11) below:

4 (1) Medical motions and appeals of administrative orders on medical motions filed pursuant to Rule
5 .0609A of this Subchapter shall be filed via electronic mail to medicalmotions@ic.nc.gov.

6 (2) Motions or notices filed with the Office of the Executive Secretary pursuant to Rule .0609(b) of this
7 Subchapter and any other documents to be filed with the Office of the Executive Secretary which
8 are not listed in Table 1 or Table 2 above shall be sent via electronic mail to execsec@ic.nc.gov.

9 (3) Motions before a Deputy Commissioner filed pursuant to Rule .0609(a) of this Subchapter and any
10 other documents to be filed with a Deputy Commissioner which are not listed in Table 1 or Table 2
11 above shall be sent via electronic mail to deputy@ic.nc.gov.

12 (4) Motions before the Full Commission filed pursuant to Rule .0609(c) of this Subchapter and any
13 other documents to be filed with the Full Commission which are not listed in Table 1 or Table 2
14 above shall be sent via electronic mail to fullcommission@ic.nc.gov.

15 (5) Motions and any other documents to be filed with the Commission's Claims Administration Section
16 which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to forms@ic.nc.gov.

17 (6) Documents to be filed with the Commission's Docket Section which are not listed in Table 1 or
18 Table 2 above shall be sent via electronic mail to dockets@ic.nc.gov.

19 (7) Documents to be filed with the Commission's Mediation Section which are not listed in Table 1 or
20 Table 2 above shall be sent via electronic mail to mediation@ic.nc.gov.

21 (8) Documents to be filed with the Commission's Compliance & Fraud Investigative Division which
22 are not listed in Table 1 or Table 2 above shall be sent via electronic mail to
23 fraudcomplaints@ic.nc.gov.

24 (9) Documents to be filed with the Commission's Medical Fees Section which are not listed in Table 1
25 or Table 2 above shall be sent via electronic mail to medicalfees@ic.nc.gov.

26 (10) Documents to be filed with the Commission's Safety Education & Training Section which are not
27 listed in Table 1 or Table 2 above shall be sent via electronic mail to safety@ic.nc.gov.

28 (11) Forms 25N to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent
29 via electronic mail to 25n@ic.nc.gov. Rehabilitation referrals to be filed with the Commission's
30 Medical Rehabilitation Nurses Section shall be sent via electronic mail to rehab.referrals@ic.nc.gov.

31 (e) A one-year waiver shall be granted to a self-insured employer, carrier, third-party administrator, or law firm that
32 notifies the Commission of its inability to comply with the electronic filing requirements in Paragraph (a) of this Rule
33 due to a lack of the necessary internet technology resources. The notification shall indicate why the entity is unable
34 to comply with the rule and outline its plan for coming into compliance within the one-year period. The notification
35 shall be filed with the Office of the Clerk of the Commission via facsimile or U.S Mail.

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

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7 *History Note: Authority G.S. 97-80;*
8 *Eff. February 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Industrial Commission

RULE CITATION: 04 NCAC 10A .0404

DEADLINE FOR RECEIPT: December 14, 2015

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Note the general comment regarding forms, above.

Page 1, line 14 – insert “was” after “compensation.” What does “including from and to” mean? If you mean “the date range during which such compensation was paid” then please as so.

Page 1, line 24 – delete the comma at the end of the line

Page 2, line 18 – delete the comma after “hearing”

Page 2, line 27 – replace “under” with “pursuant to”

Page 2, line 29 – replace “order” with “Administrative Decision and Order” if that is what you mean. If another kind of order is intended, identify it clearly.

Page 3, line 6 – add “to a date preceding the filing date of the Form 24 Application to Terminate or Suspend Payment of Compensation” after “retroactively”

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: November 30, 2015

1 04 NCAC 10A .0404 is amended as published in 30:6 NCR 593-602 as follows:

2
3 **04 NCAC 10A .0404 TERMINATION AND SUSPENSION OF COMPENSATION**

4 (a) No application to terminate or suspend compensation shall be approved by the Commission without a formal
5 hearing if the effect of the approval is to set aside the provisions of an award of the Commission.

6 (b) When an employer, carrier, or administrator seeks to terminate or suspend temporary total disability compensation
7 being paid pursuant to G.S. 97-29 for a reason other than those specified in G.S. 97-18(d) (payment without prejudice),
8 G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only
9 for claims arising on or after June 24, 2011)), the employer, carrier, or administrator shall notify the employee's
10 attorney of record or the employee, if not represented, on Form 24, *Application to Terminate or Suspend Payment of*
11 *Compensation*. This form requests:

- 12 (1) the date of injury or accident and date the disability began;
- 13 (2) the nature and extent of injury;
- 14 (3) the number of weeks compensation paid and the date range including from and to;
- 15 (4) the total amount of indemnity compensation paid to date;
- 16 (5) whether one of the following events has occurred:
 - 17 (A) an agreement was approved by the Commission and the date;
 - 18 (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
 - 19 (C) an employer paid compensation to the employee without contesting the claim within the
20 statutory period provided under G.S. 97-18(d); or
 - 21 (D) any other event related to the termination or suspension of compensation;
- 22 (6) whether the application is made to terminate or suspend compensation and the grounds; and
- 23 (7) whether the employee is in managed care.

24 (c) The employer, carrier, or administrator shall specify the grounds and the alleged facts supporting the application,
25 and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 *Application to Terminate*
26 *or Suspend Payment of Compensation* by inserting a date 17 days from the date the employer, carrier, or administrator
27 serves the completed Form 24 *Application to Terminate or Suspend Payment of Compensation* on the employee's
28 attorney of record by e-mail or facsimile, or the employee, if not represented, by ~~certified mail, return receipt~~
29 ~~requested.~~ first class mail. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and attached
30 documents shall be sent to the Commission via upload to the Electronic Document ~~Fee Filing Portal, Portal in~~
31 accordance with Rule .0108 of this Subchapter, and shall be contemporaneously served on employee's counsel by e-
32 mail or facsimile, or on the employee, if unrepresented, by ~~certified mail, return receipt requested.~~ first class mail.

33 (d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages
34 of documents attached which are to be considered by the Commission. If the employee or the employee's attorney of
35 record objects by the date inserted on the employer's Form 24 *Application to Terminate or Suspend Payment of*
36 *Compensation*, the Commission shall set the case for an informal hearing, unless waived by the parties in favor of a
37 formal hearing. The objection shall be filed in accordance with Rule .0108 and shall be accompanied by all currently

1 available supporting documentation. A copy of any objection shall be contemporaneously served on the employer,
2 carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection
3 may be supplemented with any additional relevant documentation received after the initial filing. The term "carrier"
4 or "administrator" also includes any successor in interest in the pending claim.

5 (e) If an employee does not object within the allowed time, the Commission shall review the Form 24 *Application to*
6 *Terminate or Suspend Payment of Compensation* and any attached documentation, and an Administrative Decision
7 and Order shall be rendered without an informal hearing as to whether there is a sufficient basis under the Workers'
8 Compensation Act to terminate or suspend compensation, except as provided in Paragraph (g) of this Rule. Either
9 party may seek review of the Administrative Decision and Order as provided by Rule ~~.0703~~ .0702 of this Subchapter.

10 (f) If the employee timely objects to the Form 24 *Application to Terminate or Suspend Payment of Compensation*,
11 the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 24
12 *Application to Terminate or Suspend Payment of Compensation*, unless the time is extended for good cause shown.
13 The informal hearing may be by telephone conference between the Commission and the parties or their attorneys of
14 record. The informal hearing may be conducted with the parties or their attorneys of record personally present with
15 the Commission. The Commission shall make arrangements for the informal hearing with a view towards conducting
16 the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side
17 given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the above, the employer, carrier,
18 or administrator may waive the right to an informal hearing, and proceed to a formal hearing by filing a request for
19 hearing on a Form 33 *Request that Claim be Assigned for Hearing*.

20 (g) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule ~~.0703~~
21 .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The
22 hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The
23 employer has the burden of producing evidence on the issue of the employer's application for termination or suspension
24 of compensation. If the Deputy Commissioner reverses an order previously granting a Form 24 *Application to*
25 *Terminate or Suspend Payment of Compensation* motion, the employer, carrier, or administrator shall promptly
26 resume compensation or otherwise comply with the Deputy Commissioners decision, notwithstanding any appeal or
27 application for review to the Full Commission under G.S. 97-85.

28 (h) If the Commission is unable to reach a decision after an informal hearing, the Industrial Commission shall issue
29 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
30 be placed on the formal hearing docket. If additional issues are to be addressed, the employer, carrier, or administrator
31 shall within 30 days of the date of the Administrative Decision and Order file a Form 33 *Request that Claim be*
32 *Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary. The effect of placing
33 the case on the docket shall be the same as if the Form 24 *Application to Terminate or Suspend Payment of*
34 *Compensation* were denied, and compensation shall continue until such time as the case is decided by a Commissioner
35 or a Deputy Commissioner following a formal hearing.

1 (i) The Commission shall ~~mail any Administrative Decision and Order to the non-prevailing party by certified mail.~~
2 send a copy of the Administrative Decision and Order to a non-prevailing party who is without legal representation
3 by certified mail.

4 (j) No order issued as a result of an informal Form 24 *Application to Terminate or Suspend Payment of Compensation*
5 hearing shall terminate or suspend compensation retroactively to a date preceding the filing date of the Form 24
6 *Application to Terminate or Suspend Payment of Compensation*. Compensation may be terminated retroactively
7 without a formal hearing where there is agreement by the parties, where allowed by statute, or where the employee is
8 incarcerated. Otherwise, retroactive termination or suspension of compensation to a date preceding the filing of a
9 Form 24 *Application to Terminate or Suspend Payment of Compensation* may be ordered as a result of a formal
10 hearing. Additionally, nothing shall impair an employer's right to seek a credit pursuant to G.S. 97-42.

11 (k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation
12 on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with
13 vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to
14 G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

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16 *History Note:* Authority G.S. 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a);
17 Eff. January 1, 1990;
18 Amended Eff. February 1, 2016; November 1, 2014; June 1, 2000; March 15, 1995.

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Industrial Commission

RULE CITATION: 04 NCAC 10A .0405

DEADLINE FOR RECEIPT: December 14, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Note the general comment regarding forms, above.

Note the general comment regarding the term "Full Commission," above (see page 2, line 9).

Page 1, line 6 – delete the commas after "administrator" and "record"

Page 1, line 7 – delete the comma after "Compensation"

Page 1, line 11 – add a comma after "Subchapter" and replace "are contemporaneously sent" with "shall contemporaneously be sent"

Page 1, line 22 – delete the comma after "employee"

Page 1, line 25 – insert "the" before "attached"

Page 1, line 26 – replace "render" with "issue"

Page 1, line 27 – replace "rendered" with "issued"

Page 2, line 11 – delete the comma after "effect"

Page 2, line 14 – delete the comma after "necessary"

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: November 30, 2015

1 04 NCAC 10A .0405 is amended as published in 30:6 NCR 593-602 as follows:

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3 **04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION**

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

8 (b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstate Payment of Disability*
9 *Compensation*, the original Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached
10 documents shall be ~~sent to~~ filed with the Commission ~~at the same time and by the same method by which in accordance~~
11 with Rule .0108 of this Subchapter and a copy of the Form 23 and attached documents are contemporaneously sent to
12 the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The
13 employee shall specify the grounds and the alleged facts supporting the application and shall complete the blank space
14 in the "Important Notice to Employer" portion of Form 23 *Application to Reinstate Payment of Disability*
15 *Compensation* by inserting a date 17 days from the date the employee serves the completed Form 23 *Application to*
16 *Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record,
17 if any. The Form 23 *Application to Reinstate Payment of Disability Compensation* shall specify the number of pages
18 of documents attached that are to be considered by the Commission. Within 17 days from the date the employee serves
19 the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or
20 administrator and the attorney of record, if any, the employer, carrier, or administrator shall complete Section B of the
21 Form 23 *Application to Reinstate Payment of Disability Compensation* and ~~send file it to~~ with the Commission in
22 accordance with Rule .0108 of this Subchapter and send a copy contemporaneously to the employee, or the employee's
23 attorney of record, ~~at the same time and by the same method by which the form is sent to the Commission.~~ record.

24 (c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review
25 the Form 23 *Application to Reinstate Payment of Disability Compensation* and attached documentation and, without
26 an informal hearing, render an Administrative Decision and Order as to whether there is sufficient basis under the
27 Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be rendered
28 within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a
29 response to the Form 23 *Application to Reinstate Payment of Disability Compensation*. Either party may seek review
30 of the Administrative Decision and Order as provided by Rule ~~.0703~~ .0702 of this Subchapter.

31 (d) If the employer, carrier, or administrator timely objects to the Form 23 *Application to Reinstate Payment of*
32 *Disability Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the
33 Commission of the Form 23 *Application to Reinstate Payment of Disability Compensation* unless the time is extended
34 for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record personally
35 present with the Commission. The Commission shall make arrangements for the informal hearing with a view toward
36 conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with
37 each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the foregoing, the

1 employee may waive the right to an informal hearing and proceed to a formal hearing by filing a request for hearing
2 on a Form 33 *Request that Claim be Assigned for Hearing*. Either party may appeal the Administrative Decision and
3 Order of the Commission as provided by Rule ~~.0703~~ .0702 of this Subchapter. A Deputy Commissioner shall conduct
4 a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33
5 *Request that Claim be Assigned for Hearing*. The employee has the burden of producing evidence on the issue of the
6 employee's application to reinstate compensation. If the Deputy Commissioner reverses an order previously granting
7 a Form 23 *Application to Reinstate Payment of Disability Compensation* motion, the employer shall promptly
8 terminate compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal
9 or application for review to the Full Commission under G.S. 97-85.

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

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19 *History Note:* Authority G.S. 97-18(k); 97-80(a);
20 Eff. January 1, 1990;
21 Amended Eff. February 1, 2016; November 1, 2014.

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Industrial Commission

RULE CITATION: 04 NCAC 10A .0502

DEADLINE FOR RECEIPT: December 14, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 1, line 8 – inset a comma after “carrier”

Page 1, line 15 – delete the comma after “position”

Page 1, line 22 – add a comma after “mental” and delete the comma after “physical”

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: November 30, 2015

1 04 NCAC 10A .0502 is amended as published in 30:6 NCR 593-602 as follows:

2
3 **04 NCAC 10A .0502 COMPROMISE SETTLEMENT AGREEMENTS**

4 (a) The Commission shall not approve a compromise settlement agreement unless it contains the following
5 information:

- 6 (1) The employee knowingly and intentionally waives the right to further benefits under the Workers'
7 Compensation Act for the injury that is the subject of this agreement.
- 8 (2) The employer, carrier or administrator will pay all costs incurred.
- 9 (3) No rights other than those arising under the provisions of the Workers' Compensation Act are
10 compromised or released by this agreement.
- 11 (4) The employee has, or has not, returned to a job or position at the same or a greater average weekly
12 wage as was being earned prior to the injury or occupational disease.
- 13 (5) Where the employee has not returned to a job or position at the same or a greater wage as was being
14 earned prior to the injury or occupational disease, the employee has, or has not, returned to some
15 other job or position, and, if so, the description of the particular job or position, the name of the
16 employer, and the average weekly wage earned. This Subparagraph does not apply where the
17 employee or counsel certifies that partial wage loss due to an injury or occupational disease is not
18 being claimed.
- 19 (6) Where the employee has not returned to a job or position at the same or a greater average weekly
20 wage as was being earned prior to the injury or occupational disease, a summary of the employee's
21 age, educational level, past vocational training, past work experience, and any impairment,
22 emotional, mental or physical, that predates the current injury or occupational disease. This
23 Subparagraph does not apply upon a showing of:
 - 24 (A) unreasonable burden upon the parties;
 - 25 (B) the employee is represented by counsel; or
 - 26 (C) even if the employee is not represented by counsel, where the employee or counsel certifies
27 that total wage loss due to an injury or occupational disease is not being claimed.

28 (b) No compromise settlement agreement shall be considered by the Commission unless the following requirements
29 are met:

- 30 (1) The relevant medical, vocational, and rehabilitation reports known to exist, including those pertinent
31 to the employee's future earning capacity, are submitted with the agreement to the Commission by
32 the employer, carrier, administrator, or the attorney for the employer.
- 33 (2) The parties and all attorneys of record have signed the agreement.
- 34 (3) In a claim where liability is admitted or otherwise has been established, the employer, carrier, or
35 administrator has undertaken to pay all medical expenses for the compensable injury to the date of
36 the settlement agreement.

- 1 (4) The settlement agreement contains a list of all known medical expenses of the employee related to
2 the injury to the date of the settlement agreement, including medical expenses that the employer,
3 carrier, or administrator disputes, when the employer or insurer has not agreed to pay all medical
4 expenses of the employee related to the injury up to the date of the settlement agreement.
- 5 (5) The settlement agreement contains a list of the unpaid medical expenses, if known, that will be paid
6 by the employer, carrier, or administrator, if there are unpaid medical expenses that the employer or
7 carrier has agreed to pay. The settlement agreement also contains a list of unpaid medical expenses,
8 if known, that will be paid by the employee, if there are unpaid medical expenses that the employee
9 has agreed to pay.
- 10 (6) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical
11 expense will notify in writing the unpaid health care provider of the party's responsibility to pay the
12 unpaid medical expense. Other unpaid health care providers will be notified in writing of the
13 completion of the settlement by the party specified in the settlement agreement:
- 14 (A) when the employee's attorney has notified the unpaid health care provider in writing under
15 G.S. 97-90(e) not to pursue a private claim against the employee for the costs of medical treatment,
16 or
- 17 (B) when the unpaid health care provider has notified in writing the employee's attorney of its
18 claim for payment for the costs of medical treatment and has requested notice of a settlement.
- 19 (7) Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement
20 agreement does not require payment of any medical expense in excess of the maximum allowed
21 under G.S. 97-26.
- 22 (8) The settlement agreement contains a finding that the positions of the parties to the agreement are
23 reasonable as to the payment of medical expenses.

24 (c) When a settlement has been reached, the written agreement shall be submitted to the Commission upon ~~execution~~
25 execution in accordance with Rule .0108 of this Subchapter. All compromise settlement agreements shall be directed
26 to the Office of the Executive Secretary for review or distribution for review in accordance with Paragraphs ~~(a) and~~
27 ~~(b)~~ (a) through (c) of Rule .0609 of this Subchapter.

28 (d) Once a compromise settlement agreement has been approved by the Commission, the employer, carrier, or
29 administrator shall furnish an executed copy of the agreement to the employee's attorney of record or the employee,
30 if unrepresented.

31 (e) An attorney seeking fees in connection with a Compromise Settlement Agreement shall submit to the Commission
32 a copy of the fee agreement with the client.

33
34 *History Note:* Authority G.S. 97-17; 97-80(a); 97-82;

35 *Eff. January 1, 1990;*

36 *Amended Eff. February 1, 2016; November 1, 2014; August 1, 2006; June 1, 2000; March 15, 1995.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Industrial Commission

RULE CITATION: 04 NCAC 10A .0609

DEADLINE FOR RECEIPT: December 14, 2015

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Note the general comment regarding the term "Full Commission," above (see page 1, lines 8, 16, 17, 18, 20, 23).

Page 1, line 14 – replace "Commissioner" with "Commissioner's"

Page 1, line 32 – use "shall" if it refers to a requirement imposed on yourself or your regulated public; use "will" if the phrase is explanatory or refers to the internal workings or policy of your agency.

Page 2, line 7 – insert "a" before "response"

Page 2, line 11 – delete the comma after "argument"

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: November 30, 2015

1 04 NCAC 10A .0609 is amended as published in 30:6 NCR 593-602 as follows:

2
3 **04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES**

4 (a) Motions and responses before a Deputy Commissioner:

5 (1) in cases that are currently calendared for hearing before a Deputy Commissioner shall be ~~sent by~~
6 ~~the filing party directly to the assigned Deputy Commissioner.~~ filed in accordance with Rule .0108
7 of this Subchapter.

8 (2) to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full
9 Commission, shall be ~~directed by the filing party~~ addressed to the Deputy Commissioner who
10 authored the Opinion and ~~Award.~~ Award and filed in accordance with Rule .0108 of this Subchapter.

11 (b) Motions and responses shall be ~~sent by the filing party directly to~~ filed with the Office of the Executive ~~Secretary:~~
12 Secretary in accordance with Rule .0108 of this Subchapter:

13 (1) when a case is not calendared before a Deputy Commissioner;

14 (2) once a case has been continued or removed from a Deputy Commissioner calendar; or

15 (3) after the filing of an Opinion and Award when the time for taking appeal has run.

16 (c) Motions and responses before the Full Commission:

17 (1) in cases calendared for hearing before the Full Commission shall be ~~sent by the filing party directly~~
18 addressed to the Chair of the Full Commission ~~panel.~~ panel and filed in accordance with Rule .0108
19 of this Subchapter.

20 (2) filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the
21 case shall be ~~directed by the filing party~~ addressed to the Chair of the ~~Commission.~~ Commission
22 and filed in accordance with Rule .0108 of this Subchapter.

23 (3) in cases continued from the Full Commission hearing docket, shall be ~~directed by the filing party~~
24 addressed to the Chair of the panel of Commissioners who ordered the ~~continuance.~~ continuance
25 and filed in accordance with Rule .0108 of this Subchapter.

26 (4) filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of
27 appeal to the Court of Appeals shall be ~~sent by the filing party directly~~ addressed to the
28 Commissioner who authored the Opinion and ~~Award.~~ Award and filed in accordance with Rule
29 .0108 of this Subchapter.

30 (d) Motions and responses thereto shall include a caption containing the Industrial Commission file number(s), party
31 names, and a title identifying the nature of the motion or response. Motions and responses set forth in the body of
32 electronic mail correspondence or contained in a brief shall not be accepted for filing by the Commission. This
33 Paragraph does not apply to parties without legal representation.

34 ~~(d)~~(e) A motion shall state with particularity the grounds on which it is based, the relief sought, and the opposing
35 party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing parties if not
36 represented.

1 ~~(e)~~(f) Motions to continue or remove a case from the hearing calendar on which the case is set shall be made as much
2 in advance as possible of the scheduled hearing and may be made in written or oral form. In all cases, the moving
3 party shall provide the basis for the motion and state that the other parties have been advised of the motion and relate
4 the position, if known, of the other parties regarding the motion. Oral motions shall be followed with a written motion
5 from the moving party.

6 ~~(f)~~(g) The responding party to a motion shall have 10 days after a motion is served during which to file and serve
7 copies of response in opposition to the motion. The Commission may shorten or extend the time for responding to
8 any motion in the interests of justice or to promote judicial economy.

9 ~~(g)~~(h) A party who has not received actual notice of a motion or who has not filed a response at the time action is
10 taken and who is adversely affected by the action may request that it be reconsidered, vacated, or modified. Motions
11 shall be determined without oral argument, unless the Commission determines that oral argument is necessary for a
12 complete understanding of the issues.

13 ~~(h)~~(i) Where correspondence relative to a case before the Commission is sent to the Commission, copies of such
14 correspondence shall be contemporaneously sent by the same method of transmission to the opposing party or, if
15 represented, to opposing counsel. Written communications, whether addressed directly to the Commission or copied
16 to the Commission, may not be used as an opportunity to introduce new evidence or to argue the merits of the case,
17 with the exception of the following:

- 18 (1) written communications, such as a proposed order or legal memorandum, prepared pursuant to the
19 Commission's instructions;
- 20 (2) written communications relative to emergencies, changed circumstances, or scheduling matters that
21 may affect the procedural status of a case such as a request for a continuance due to the health of a
22 litigant or an attorney;
- 23 (3) written communications sent to the tribunal with the consent of the opposing lawyer or opposing
24 party, if unrepresented; and
- 25 (4) any other communication permitted by law or the Rules of the Commission.

26 ~~(i)~~(j) All motions and responses thereto shall include a proposed Order in Microsoft Word format to be considered
27 by the Commission.

28
29 *History Note: Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91;*
30 *Eff. January 1, 1990;*
31 *Amended Eff. February 1, 2016; November 1, 2014; June 1, 2000; March 15, 1995.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Industrial Commission

RULE CITATION: 04 NCAC 10A .0609A

DEADLINE FOR RECEIPT: December 14, 2015

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Note the general comment regarding the term "Full Commission," above (see page 3, lines 14, 16, 20).

Page 1, line 4 – delete the commas after "97-27" and "thereto"

Page 2, line 11 – delete the comma after "emphasized"

Page 3, lines 3 and 5 – use "shall" if it refers to a requirement imposed on yourself or your regulated public; use "will" if the phrase is explanatory or refers to the internal workings or policy of your agency.

Page 3, line 27 – replace "Commissioner" with "Commissioner's"

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: November 30, 2015

1 04 NCAC 10A .0609A is amended as published in 30:6 NCR 593-602 as follows:

2
3 **04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS**

4 (a) Medical motions brought pursuant to G.S. 97-25, and responses thereto, shall be brought before either the Office
5 of the Chief Deputy Commissioner or the Executive Secretary and shall be submitted electronically to
6 medicalmotions@ic.nc.gov. Motions and responses shall be submitted contemporaneously to the Commission and
7 the opposing party or opposing party's counsel, if represented.

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

10 (c) In addition to any notice of representation contained in a medical motion or response, an attorney who is retained
11 by a party to prosecute or defend a medical motion or appeal before the Commission shall file a notice of representation
12 ~~with the Docket Director at docket@ic.nc.gov~~ in accordance with Rule .0108 of the Subchapter and send a copy of
13 the notice to all other counsel and all unrepresented parties involved in the proceeding.

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

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

- 1 (10) a statement of the time-sensitive nature of the request, if any;
- 2 (11) an explanation of opinions known and in the possession of the movant by any relevant experts,
- 3 independent medical examiners, and second opinion examiners;
- 4 (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify
- 5 whether the employee has made a prior written request to the defendants for the examination, as
- 6 well as the date of the request and the date of the denial, if any;
- 7 (13) a representation that informal means of resolving the issue have been attempted in good faith, and
- 8 the opposing party's position, if known; and
- 9 (14) a proposed ~~Order~~. Order in Microsoft Word format.

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

- 11 (1) a boldface or otherwise emphasized, designation as "Emergency Medical Motion";
- 12 (2) the employee's name. If the employee is unrepresented, the employee's telephone number and, if
- 13 available, the employee's email address and fax number. If the employee is represented, the name,
- 14 email address, telephone number, and fax number of the employee's counsel;
- 15 (3) the employer's name and employer code, if known;
- 16 (4) the carrier or third party administrator's name, carrier code, telephone number, fax number, and, if
- 17 available, email address;
- 18 (5) the adjuster's name, email address, telephone number, and fax number if counsel for the
- 19 employer/carrier has not been retained;
- 20 (6) the counsel for employer/carrier's name, email address, telephone number, and fax number;
- 21 (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider
- 22 that requires emergency attention;
- 23 (8) a statement of the need for a shortened time period for review, including relevant dates and the
- 24 potential for adverse consequences if the recommended relief is not provided emergently;
- 25 (9) an explanation of opinions known and in the possession of the movant by any relevant experts,
- 26 independent medical examiner, and second opinion examiners;
- 27 (10) a representation that informal means of resolving the issue have been attempted in good faith, and
- 28 the opposing party's position, if known;
- 29 (11) documents known and in the possession of the movant relevant to the request, including relevant
- 30 medical records; and
- 31 (12) a proposed ~~Order~~. Order in Microsoft Word format.

32 (f) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of

33 any time allowed for response and whether informal telephonic oral argument is necessary.

34 (g) A party may appeal an Order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or

35 receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of this Subchapter by submitting filing

36 notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter

37 or motion expressing an intent to appeal a decision of the Executive Secretary shall be considered a request for an

1 expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter or motion shall specifically identify the Order
2 from which the appeal is taken and shall indicate that the appeal is from an administrative Order by the Executive
3 Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of appeal, the appeal shall be assigned to a
4 Deputy Commissioner and an Order under the name of the Deputy Commissioner to which the appeal is assigned
5 shall be issued within five days of receipt of the notice of appeal.

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

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

24 (j) A party may appeal the administrative decision of the Chief Deputy Commissioner or the Chief Deputy
25 Commissioner's designee filed pursuant to G.S. 97-25(f)(3) by submitting filing notice of appeal electronically to
26 medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to
27 appeal the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee's Order filed pursuant to G.S.
28 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies the Order from which
29 appeal is taken and indicates that the appeal is from an Order of a Deputy Commissioner entered pursuant to G.S. 97-
30 25(f)(3). After receipt of notice of appeal, the appeal shall be acknowledged within five days by sending an Order
31 under the name of the Deputy Commissioner to whom the appeal is assigned. The appeal of the administrative decision
32 of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee shall be subject to G.S. 97-25(f)(2)
33 and G.S. 97-84.

34 (k) ~~The Commission shall accept the filing of documents by non-electronic methods if electronic transmission is~~
35 ~~unavailable to the party.~~ Claimants and employers without legal representation are not required to file documents via
36 electronic transmission and may file documents with the Commission via EDFP, electronic mail, facsimile, U.S. Mail,
37 private courier service, or hand delivery.

1

2 *History Note:* Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77;

3 *Eff. January 1, 2011;*

4 *Amended Eff. February 1, 2016; November 1, 2014.*

1 04 NCAC 10A .0610 is amended as published in 30:6 NCR 593-602 as follows:

2

3 **04 NCAC 10A .0610 PRE-TRIAL AGREEMENT**

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

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

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

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

22

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

24 Eff. January 1, 1990;

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Industrial Commission

RULE CITATION: 04 NCAC 10A .0613

DEADLINE FOR RECEIPT: December 14, 2015

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 1, line 10 – insert a comma after “provide”

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: November 30, 2015

1 Rule 04 NCAC 10A .0613 is amended as published in 30:6 NCR 593-602 as follows:

2
3 **04 NCAC 10A .0613 EXPERT WITNESSES AND FEES**

4 (a) The parties shall file with the Deputy Commissioner or ~~Commission~~ Commissioner in accordance with Rule .0108 of
5 this Subchapter within 15 days following the hearing, a list identifying all expert witnesses to be deposed and the
6 deposition dates unless otherwise extended by the Commission in the interests of justice and judicial economy.

7 (b) After the deposition of each expert, the party that noticed the deposition shall, within 10 days after receiving the
8 expert's fee invoice, ~~submit to file with the Deputy Commissioner or Commissioner, via email,~~ Commissioner in
9 accordance with Rule .0108 of this Subchapter a request to approve the costs related to the expert deposition. In these
10 requests, the party shall provide ~~to the Deputy Commissioner or Commissioner,~~ in a cover letter along with the invoice
11 (if available), the following:

- 12 (1) the name of the expert and the expert's practice;
- 13 (2) the expert's fax number;
- 14 (3) the expert's area of specialty and board certifications, if any;
- 15 (4) the length of the deposition;
- 16 (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with
17 parties' counsel;
- 18 (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an
19 exceptional, unique, or complex injury or disease;
- 20 (7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be
21 deposed at employer's expense; and
- 22 (8) the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

23 At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice
24 name and fax number under the "Appearances" section. The proposed Order shall also reflect the party initially
25 responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

26 (c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this Rule
27 shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for
28 the deposition, if applicable.

29 (d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an
30 amount equal to 10 percent being added to the fee granted in the Order.

31 (e) A proposed fee for cancellation of a deposition within five days of a scheduled deposition may be ~~submitted to filed~~
32 with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter for consideration and approval if in the
33 interest of justice and judicial economy.

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

- 1 *History Note:* Authority G.S. 97-26.1; 97-80(a); 97-80(d);
- 2 *Eff. January 1, 1990;*
- 3 *Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: N.C. Industrial Commission

RULE CITATION: 04 NCAC 10A .0617

DEADLINE FOR RECEIPT: December 14, 2015

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 11 – insert a comma after “writing”

Line 24 – delete the commas after “party” and “counsel”

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

Jason S. Thomas
Commission Counsel
Date submitted to agency: November 30, 2015

1 04 NCAC 10A .0617 is amended as published in 30:6 NCR 593-602 as follows:

2
3 **04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS**

4 (a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable
5 rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel and
6 all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney.
7 No direct contact or communication concerning contested matters may be made with a represented party by the
8 opposing party or any person on its behalf, without the attorney's permission except as permitted by G.S. 97-32 or
9 other applicable law.

10 (b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with
11 the Commission, in writing a Motion to Withdraw that contains a statement of reasons for the request and that the
12 request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known address
13 of the client and shall include this information in the motion. A Motion to Withdraw before an award is made shall
14 state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of
15 compensation is made or approved.

16 (c) An attorney may withdraw from representation only by written order of the Commission. The issuance of an
17 award of the Commission does not release an attorney as the attorney of record.

18 (d) An attorney withdrawing from representation whose client wishes to appeal an Order, Decision, or Award to the
19 Full Commission shall timely file a notice of appeal, as set out by this Subchapter, on behalf of his or her client either
20 before or with his or her Motion to Withdraw.

21 (e) Motions to Withdraw shall be submitted electronically to attorneywithdrawals@ic.nc.gov, unless electronic
22 ~~submission is unavailable to the parties.~~ in accordance with Rule .0108 of this Subchapter. The Motion to Withdraw
23 shall include a proposed Order in Microsoft Word format that includes, in the appearances, the last known address of
24 any pro se party, or the contact information of new counsel, if such counsel has been retained. The proposed Order
25 shall include fax numbers for all parties, if known.

26
27 *History Note: Authority G.S. 97-80(a); 97-90; 97-91;*
28 *Eff. January 1, 2011;*
29 *Amended Eff. February 1, 2016; November 1, 2014.*