

## Burgos, Alexander N

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**From:** Cammarano, Gina  
**Sent:** Tuesday, December 20, 2022 10:59 AM  
**To:** Rules, Oah  
**Cc:** Duke, Lawrence; Burgos, Alexander N  
**Subject:** Rule 11 NCAC 23G- Resubmitted Rule attached for 1/19/23 RRC Meeting  
**Attachments:** 11 NCAC 23G .0104.docx

Good morning,

Attached please find the Industrial Commission's resubmitted Rule 11 NCAC 23G .0104, which we respectfully request be considered at the Rules Review Commission's January 19, 2023 meeting.

Thank you for all your assistance, and please let me know if any other changes are requested.

Sincerely yours,



**GINA CAMMARANO**  
RULEMAKING COORDINATOR  
**NORTH CAROLINA INDUSTRIAL COMMISSION**  
1240 MAIL SERVICE CENTER  
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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

1 11 NCAC 23G .0104 is amended with changes as published in 37:6 NCR 441-443 as follows:

2  
3 **11 NCAC 23G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS**

4 (a) Attendance. The following persons shall attend the mediated settlement conference:

- 5 (1) all individual parties;
- 6 (2) in a workers' compensation case, a representative of the employer at the time of injury if:
- 7 (A) the employer, instead of or in addition to the insurance company or administrator, has
- 8 decision-making authority with respect to settlement;
- 9 (B) the employer is offering the claimant employment and the suitability of that employment
- 10 is in at issue; issue; or
- 11 (C) the employer and the claimant have agreed to simultaneously mediate non-compensation
- 12 issues arising from the injury; or injury.
- 13 ~~(D) the Commission orders the employer representative to attend the conference if the~~
- 14 ~~representative's attendance is necessary to resolve matters in dispute in the subject action;~~
- 15 (3) an officer, employee, or agent of any party party, that is not a natural person or a governmental
- 16 entity entity, who is not the party's outside counsel and who has the authority to decide on behalf of
- 17 the party whether and on what terms to settle the action;
- 18 (4) in a workers' compensation case, an employee or agent of any party that is a governmental entity
- 19 who is not the party's outside counsel or Attorney General's counsel responsible for the case and
- 20 who has the authority to decide on behalf of the party whether and on what terms to settle the action;
- 21 (5) when the governing law prescribes that the terms of a proposed settlement may be approved only
- 22 by a Board board, an employee or agent who is not the party's outside counsel or Attorney General's
- 23 counsel responsible for the case and who has the authority to negotiate on behalf of and to make a
- 24 recommendation to the Board board. Pursuant to In claims with settlements subject to the review
- 25 and approval by the Industrial Commission under G.S. 143-295, an employee or agent of the named
- 26 governmental entity or agency is not required to attend the mediated settlement conference. The
- 27 Attorney General shall attempt to make an employee or agent of the named governmental entity or
- 28 agency in a State tort claim available via telecommunication, and mediation shall not be delayed
- 29 due to the absence or unavailability of the employee or agent of the named governmental entity or
- 30 agency;
- 31 (6) the counsels of record. Appearance by counsel does not dispense with or waive the required
- 32 attendance of the parties listed in Subparagraphs (1) through (4);(5):
- 33 (7) a representative of each defendant's primary workers' compensation or liability insurance carrier or
- 34 self-insured that may be obligated to pay all or part of any claim presented in the action. Each carrier
- 35 or self-insured shall be represented at the conference by an officer, employee, or agent who is not
- 36 the party's outside counsel and who has the authority to decide on behalf of the carrier or self-insured
- 37 whether and on what terms to settle the action, or who has been authorized to negotiate on behalf of

1 the carrier or self-insured and can communicate during the conference with persons who have the  
2 decision making ~~authority; and authority.~~

3 (8) ~~by order of the Commission, other representatives of parties, employers, or carriers, who may be~~  
4 ~~obligated to pay all or part of any claim presented in the action and who are not required to attend~~  
5 ~~the conference pursuant to Subparagraphs (1) through (6) of this Paragraph, if the Commission~~  
6 ~~determines that the representative's attendance is necessary for purposes of resolving the matters in~~  
7 ~~dispute in the subject action. Any any~~ employer or carrier who may be obligated to pay all or part  
8 of any claim presented in the action and who is not required to attend the mediated settlement  
9 conference pursuant to Subparagraphs (1) through ~~(6) (7)~~ of this Paragraph ~~or by Commission~~  
10 ~~orders,~~ may attend the conference if the employer or carrier elects to attend. If, during the  
11 conference, the mediator determines that the attendance of one or more additional persons is  
12 necessary to resolve the matters in dispute in the subject action, the mediator may recess the  
13 conference and reconvene the conference at a later date and time to allow the additional person or  
14 persons to attend.

15 (b) Any party or person required to attend a mediated settlement conference shall attend the conference until an  
16 agreement is reduced to writing and signed as provided in Paragraph (e) of this Rule, or until an impasse has been  
17 declared. ~~"Attendance" shall mean in person attendance whenever the mediation rules approved by the North Carolina~~  
18 ~~Supreme Court that are in effect at the time of the mediation for use in the Superior Court division require in person~~  
19 ~~attendance. During any time that attendance means in person attendance, any party or person, including the mediator,~~  
20 ~~may have the in person attendance requirement excused or modified by agreement of all the parties and persons~~  
21 ~~required to attend the mediation conference, including the mediator, or by order of the Commission in the interests of~~  
22 ~~justice upon motion of a party and notice to all parties and persons required to attend the conference, including the~~  
23 ~~mediator. "Attendance" shall mean attendance using remote technology whenever the mediation rules approved by~~  
24 ~~the North Carolina Supreme Court that are in effect at the time of the mediation for use in the Superior Court division~~  
25 ~~require attendance through the use of remote technology. During any time that attendance means attendance through~~  
26 ~~the use of remote technology, any party or person required to attend the conference, including the mediator, may have~~  
27 ~~the remote technology attendance requirement excused or modified by agreement of all parties and persons required~~  
28 ~~to attend the conference, including the mediator, or by order of the Commission in the interests of justice upon motion~~  
29 ~~of a party and notice to all parties and persons required to attend the conference, including the mediator. The attendance~~  
30 ~~method for Industrial Commission mediations shall be the same as the attendance method set forth in the mediation~~  
31 ~~rules approved by the North Carolina Supreme Court that are in effect at the time of the mediation for use in the~~  
32 ~~Superior Court division. Rule 4 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures~~  
33 ~~in Superior Court Civil Actions, which is hereby incorporated by reference and includes subsequent amendments and~~  
34 ~~editions. A copy of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior~~  
35 ~~Court Civil Actions may be obtained at no charge from the North Carolina Judicial Branch website, at~~  
36 ~~<https://www.nccourts.gov/courts/supreme-court/court-rules/rules-for-mediated-settlement-conferences-and-other->~~  
37 ~~[settlement-procedures-in-superior-court-civil-actions](https://www.nccourts.gov/courts/supreme-court/court-rules/rules-for-mediated-settlement-conferences-and-other-), or upon request at the main office of the Industrial Commission.~~

1 located on the 6<sup>th</sup> floor of the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603, between  
2 the hours of 8:00 a.m. and 5 p.m. Monday through Friday, excluding holidays established by the State Human  
3 Resources Commission. All parties and persons required to attend the conference, including the mediator, shall comply  
4 with all public health and safety requirements set forth in the mediation rules approved by the North Carolina Supreme  
5 Court for use in the Superior Court division that are in effect at the time of the mediation mediation. for use in the  
6 Superior Court division.

7 (c) In appropriate cases, the Commission or the mediator, with the consent of the parties, may allow a party or  
8 insurance carrier representative who is required to attend a mediated settlement conference in person under this Rule  
9 to attend the conference by telephone, conference call, speaker telephone, or videoconferencing. videoconferencing;  
10 the- The attending party or representative shall bear all costs of the telephone calls or videoconferencing. In addition,  
11 the mediator may communicate directly with the insurance representative with regard to matters discussed in  
12 mediation, and the mediator may set a subsequent mediated settlement conference at which all parties and  
13 representatives shall attend the mediated settlement conference in person, subject to Paragraph (b) of this Rule. The  
14 failure to appear by telephone or videoconferencing in accordance with this Paragraph shall subject the responsible  
15 party(ies)- party or representative(s)- representative to sanctions pursuant to Rule .0105 of this Subchapter.

16 (d) Notice of Mediation Order. Within seven days after the receipt of an order for a mediated settlement conference,  
17 the carrier or self-insured named in the order shall provide a copy of the order to the employer and all other carriers  
18 who may be obligated to pay all or part of any claim presented in the workers' compensation case or any related third-  
19 party tortfeasor claims, and shall provide the mediator and the other parties in the action with the name, address, and  
20 telephone number of all such carriers.

21 (e) Finalizing Agreement. If an agreement is reached in the mediated settlement conference, the parties shall reduce  
22 the agreement to writing, specifying all terms of the agreement that bear on the resolution of the dispute before the  
23 Commission, and shall sign the agreement along with their counsel. The parties may use IC Form MSC8, Mediated  
24 Settlement Agreement, or MSC9, Mediated Settlement Agreement – Alternative Form, for this purpose. Execution by  
25 counsel of a mediated settlement agreement for an employer or carrier who does not physically attend the mediated  
26 settlement conference shall be deemed to be in compliance with this Rule and 11 NCAC 23A .0502. By stipulation of  
27 the parties and at the parties' expense, the agreement may be electronically or stenographically recorded. All  
28 agreements for payment of compensation shall be submitted for Commission approval in accordance with 11 NCAC  
29 23A .0501 and .0502.

30 (f) Payment of Mediator's Fee. The mediator's fee shall be paid at the conclusion of the mediated settlement  
31 conference, unless otherwise provided by Rule .0107 of this Subchapter, or by agreement with the mediator.

32 (g) Related Cases. Upon application by any party or any person as defined in G.S. 97-2(4), and upon notice to all  
33 parties, the Commission may, in the interests of justice, order an attorney of record, party, or representative of an  
34 insurance carrier who may be liable for all or any part of a claim pending in a Commission case to attend a mediated  
35 settlement conference convened in another related pending case, regardless of the forum in which the other case may  
36 be pending, provided that all parties in the other pending case consent to the attendance ordered pursuant to this  
37 Paragraph. Any disputed issues concerning such an order shall be addressed to the Commission's Dispute Resolution

1 Coordinator. Unless otherwise ordered, any attorney, party, or carrier representative who attends a mediated settlement  
2 conference pursuant to this Paragraph shall not be required to pay any of the mediation fees or costs related to that  
3 conference. Requests that a party, attorney of record, or insurance carrier representative in a related case attend a  
4 mediated settlement conference in a Commission case shall be addressed to the court or agency where the related case  
5 is pending, provided that all parties in the Commission case consent to the requested attendance.

6  
7 *History Note:* Authority G.S. 97-80; 143-296; 143-300; ~~Rule 4 of Rules for Mediated Settlement Conferences and~~  
8 ~~Other Settlement Procedures in Superior Court Civil Actions;~~  
9 *Eff. January 16, 1996;*  
10 *Amended Eff. October 1, 1998;*  
11 *Recodified from 04 NCAC 10A .0616;*  
12 *Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;*  
13 *Recodified from 04 NCAC 10G .0104 Eff. June 1, 2018;*  
14 *Emergency Amendment Eff. June 16, 2020;*  
15 *Amended Eff. August 1, 2020;*  
16 *Temporary Amendment Eff. August 28, 2020;*  
17 *Amended Eff. March 1, 2021;*  
18 ~~*Amended Eff. February 1, 2023.*~~  
19  
20

## Burgos, Alexander N

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**From:** Cammarano, Gina  
**Sent:** Tuesday, December 20, 2022 10:54 AM  
**To:** Duke, Lawrence  
**Cc:** Burgos, Alexander N  
**Subject:** RE: RRC - 11 NCAC 23G Extension Letter

Thanks so much for checking and getting back to me so quickly!



**GINA CAMMARANO**  
RULEMAKING COORDINATOR  
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**From:** Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Sent:** Tuesday, December 20, 2022 10:52 AM  
**To:** Cammarano, Gina <gina.cammarano@ic.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: RRC - 11 NCAC 23G Extension Letter

You're good to go. I checked both pending issues and you may resubmit the final version to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov).

**Lawrence Duke**  
Counsel, NC Rules Review Commission  
Office of Administrative Hearings  
(984) 236-1938

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**From:** Cammarano, Gina <[gina.cammarano@ic.nc.gov](mailto:gina.cammarano@ic.nc.gov)>  
**Sent:** Tuesday, December 20, 2022 7:46 AM  
**To:** Duke, Lawrence <[lawrence.duke@oah.nc.gov](mailto:lawrence.duke@oah.nc.gov)>  
**Subject:** RE: RRC - 11 NCAC 23G Extension Letter

Would you have any time today to discuss the Rule so that I can try to finalize it? I'd like to get all your concerns addressed so that it is written in a way that you feel comfortable recommending approval. Then I will take it to our stakeholders to explain the requested changes to them.

I am free all day to discuss, so whatever is most convenient for you as far as a time is fine with me.

Thanks!  
Gina



**GINA CAMMARANO**  
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**From:** Duke, Lawrence <[lawrence.duke@oah.nc.gov](mailto:lawrence.duke@oah.nc.gov)>  
**Sent:** Friday, December 16, 2022 11:48 AM  
**To:** Cammarano, Gina <[gina.cammarano@ic.nc.gov](mailto:gina.cammarano@ic.nc.gov)>  
**Subject:** RRC - 11 NCAC 23G Extension Letter

Good afternoon,

Attached, please find a letter of extension for the above captioned rules. We can discuss the process moving forward next Monday or Tuesday. Please let me know if you have any questions or concerns.

Thank you,

**Lawrence Duke**



**Counsel to the North Carolina Rules Review Commission**  
**Office of Administrative Hearings**  
[Lawrence.Duke@oah.nc.gov](mailto:Lawrence.Duke@oah.nc.gov)  
**(984) 236-1938**

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## Burgos, Alexander N

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**Subject:** FW: 11 NCAC 23G .0104 - Rules Review Commission

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**From:** Cammarano, Gina <gina.cammarano@ic.nc.gov>  
**Sent:** Wednesday, December 14, 2022 10:12 AM  
**To:** Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: 11 NCAC 23G .0104 - Rules Review Commission

Also, the reason I didn't add the word "of" in this sentence: a representative of each defendant's primary workers' compensation or liability insurance carrier is because there are sometimes more than one defendant in a case and at a mediation. So this sentence is referring to "each defendant" (which can be one or more). Does that make sense?



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**From:** Duke, Lawrence <[lawrence.duke@oah.nc.gov](mailto:lawrence.duke@oah.nc.gov)>  
**Sent:** Wednesday, December 14, 2022 10:04 AM  
**To:** Cammarano, Gina <[gina.cammarano@ic.nc.gov](mailto:gina.cammarano@ic.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: 11 NCAC 23G .0104 - Rules Review Commission

Yes. That's fine. Please send.

**Lawrence Duke**  
Counsel, NC Rules Review Commission  
Office of Administrative Hearings  
(984) 236-1938



## Burgos, Alexander N

---

**Subject:** FW: 11 NCAC 23G .0104 - Rules Review Commission  
**Attachments:** 11 NCAC 23G .0104.docx

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**From:** Cammarano, Gina <gina.cammarano@ic.nc.gov>  
**Sent:** Wednesday, December 14, 2022 10:08 AM  
**To:** Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: 11 NCAC 23G .0104 - Rules Review Commission

This is the non-official, working document. (By the way, I noticed a few more errors in the rule that I fixed in this document—(a)(4) line 20, (a)(6), line 32, (a)(8), line 9).



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**From:** Cammarano, Gina  
**Sent:** Wednesday, December 14, 2022 9:45 AM  
**To:** Duke, Lawrence <[lawrence.duke@oah.nc.gov](mailto:lawrence.duke@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: 11 NCAC 23G .0104 - Rules Review Commission

Good morning! Is there a good time to speak this morning? I have several ideas and a couple of questions I wanted to run by you.



**GINA CAMMARANO**  
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1 11 NCAC 23G .0104 is amended with changes as published in 37:6 NCR 441-443 as follows:

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3 **11 NCAC 23G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS**

4 (a) Attendance. The following persons shall attend the mediated settlement conference:

- 5 (1) all individual parties;
- 6 (2) in a workers' compensation case, a representative of the employer at the time of injury if:
- 7 (A) the employer, instead of or in addition to the insurance company or administrator, has
- 8 decision-making authority with respect to settlement;
- 9 (B) the employer is offering the claimant employment and the suitability of that employment
- 10 is in issue; issue; or
- 11 (C) the employer and the claimant have agreed to simultaneously mediate non-compensation
- 12 issues arising from the injury; or injury.
- 13 ~~(D) the Commission orders the employer representative to attend the conference if the~~
- 14 ~~representative's attendance is necessary to resolve matters in dispute in the subject action;~~
- 15 (3) an officer, employee, or agent of any party that is not a natural person or a governmental entity who
- 16 is not the party's outside counsel and who has the authority to decide on behalf of the party whether
- 17 and on what terms to settle the action;
- 18 (4) in a workers' compensation case, an employee or agent of any party that is a governmental entity
- 19 who is not the party's outside counsel or Attorney General's counsel responsible for the case and
- 20 who has the authority to decide on behalf of the party whether and on what terms to settle the action;
- 21 (5) when the governing law prescribes that the terms of a proposed settlement may be approved only
- 22 by a Board board, an employee or agent who is not the party's outside counsel or Attorney General's
- 23 counsel responsible for the case and who has the authority to negotiate on behalf of and to make a
- 24 recommendation to the Board board. Pursuant to In claims with settlements subject to the review
- 25 and approval by the Industrial Commission under G.S. 143-295, an employee or agent of the named
- 26 governmental entity or agency is not required to attend the mediated settlement conference. The
- 27 Attorney General shall attempt to make an employee or agent of the named governmental entity or
- 28 agency in a State tort claim available via telecommunication, and mediation shall not be delayed
- 29 due to the absence or unavailability of the employee or agent of the named governmental entity or
- 30 agency;
- 31 (6) the counsels of record. Appearance by counsel does not dispense with or waive the required
- 32 attendance of the parties listed in Subparagraphs (1) through (4);(5):
- 33 (7) a representative of each defendant's primary workers' compensation or liability insurance carrier or
- 34 self-insured that may be obligated to pay all or part of any claim presented in the action. Each carrier
- 35 or self-insured shall be represented at the conference by an officer, employee, or agent who is not
- 36 the party's outside counsel and who has the authority to decide on behalf of the carrier or self-insured
- 37 whether and on what terms to settle the action, or who has been authorized to negotiate on behalf of

1 the carrier or self-insured and can communicate during the conference with persons who have the  
2 decision making ~~authority; and authority.~~

3 (8) ~~by order of the Commission, other representatives of parties, employers, or carriers, who may be~~  
4 ~~obligated to pay all or part of any claim presented in the action and who are not required to attend~~  
5 ~~the conference pursuant to Subparagraphs (1) through (6) of this Paragraph, if the Commission~~  
6 ~~determines that the representative's attendance is necessary for purposes of resolving the matters in~~  
7 ~~dispute in the subject action.~~ Any employer or carrier who may be obligated to pay all or part of any  
8 claim presented in the action and who is not required to attend the mediated settlement conference  
9 pursuant to Subparagraphs (1) through ~~(6) (7)~~ of this Paragraph ~~or by Commission orders,~~ may  
10 attend the conference if the employer or carrier elects to attend. If, during the conference, the  
11 mediator determines that the attendance of one or more additional persons is necessary to resolve  
12 the matters in dispute in the subject action, the mediator may recess the conference and reconvene  
13 the conference at a later date and time to allow the additional person or persons to attend.

14 (b) Any party or person required to attend a mediated settlement conference shall attend the conference until an  
15 agreement is reduced to writing and signed as provided in Paragraph (e) of this Rule, or until an impasse has been  
16 declared. ~~"Attendance" shall mean in-person attendance whenever the mediation rules approved by the North Carolina~~  
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36 ~~[settlement-procedures-in-superior-court-civil-actions](https://www.nccourts.gov/courts/supreme-court/court-rules/rules-for-mediated-settlement-conferences-and-other-settlement-procedures-in-superior-court-civil-actions), or upon request at the main office of the Industrial Commission,~~  
37 ~~located on the 6<sup>th</sup> floor of the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603, between~~

1 the hours of 8:00 a.m. and 5 p.m. Monday through Friday, excluding holidays established by the State Human  
2 Resources Commission. All parties and persons required to attend the conference, including the mediator, shall comply  
3 with all public health and safety requirements set forth in the mediation rules approved by the North Carolina Supreme  
4 Court that are in effect at the time of the mediation for use in the Superior Court division.

5 (c) In appropriate cases, the Commission or the mediator, with the consent of the parties, may allow a party or  
6 insurance carrier representative who is required to attend a mediated settlement conference in person under this Rule  
7 to attend the conference by telephone, conference call, speaker telephone, or videoconferencing, videoconferencing;  
8 ~~the~~ The attending party or representative shall bear all costs of the telephone calls or videoconferencing. In addition,  
9 the mediator may communicate directly with the insurance representative with regard to matters discussed in  
10 mediation, and the mediator may set a subsequent mediated settlement conference at which all parties and  
11 representatives shall attend the mediated settlement conference in person, subject to Paragraph (b) of this Rule. The  
12 failure to appear by telephone or videoconferencing in accordance with this Paragraph shall subject the responsible  
13 ~~party(ies)- party~~ or ~~representative(s)- representative~~ to sanctions pursuant to Rule .0105 of this Subchapter.

14 (d) Notice of Mediation Order. Within seven days after the receipt of an order for a mediated settlement conference,  
15 the carrier or self-insured named in the order shall provide a copy of the order to the employer and all other carriers  
16 who may be obligated to pay all or part of any claim presented in the workers' compensation case or any related third-  
17 party tortfeasor claims, and shall provide the mediator and the other parties in the action with the name, address, and  
18 telephone number of all such carriers.

19 (e) Finalizing Agreement. If an agreement is reached in the mediated settlement conference, the parties shall reduce  
20 the agreement to writing, specifying all terms of the agreement that bear on the resolution of the dispute before the  
21 Commission, and shall sign the agreement along with their counsel. The parties may use IC Form MSC8, Mediated  
22 Settlement Agreement, or MSC9, Mediated Settlement Agreement – Alternative Form, for this purpose. Execution by  
23 counsel of a mediated settlement agreement for an employer or carrier who does not physically attend the mediated  
24 settlement conference shall be deemed to be in compliance with this Rule and 11 NCAC 23A .0502. By stipulation of  
25 the parties and at the parties' expense, the agreement may be electronically or stenographically recorded. All  
26 agreements for payment of compensation shall be submitted for Commission approval in accordance with 11 NCAC  
27 23A .0501 and .0502.

28 (f) Payment of Mediator's Fee. The mediator's fee shall be paid at the conclusion of the mediated settlement  
29 conference, unless otherwise provided by Rule .0107 of this Subchapter, or by agreement with the mediator.

30 (g) Related Cases. Upon application by any party or any person as defined in G.S. 97-2(4). and upon notice to all  
31 parties, the Commission may, in the interests of justice, order an attorney of record, party, or representative of an  
32 insurance carrier who may be liable for all or any part of a claim pending in a Commission case to attend a mediated  
33 settlement conference convened in another related pending case, regardless of the forum in which the other case may  
34 be pending, provided that all parties in the other pending case consent to the attendance ordered pursuant to this  
35 Paragraph. Any disputed issues concerning such an order shall be addressed to the Commission's Dispute Resolution  
36 Coordinator. Unless otherwise ordered, any attorney, party, or carrier representative who attends a mediated settlement  
37 conference pursuant to this Paragraph shall not be required to pay any of the mediation fees or costs related to that

1 conference. Requests that a party, attorney of record, or insurance carrier representative in a related case attend a  
2 mediated settlement conference in a Commission case shall be addressed to the court or agency where the related case  
3 is pending, provided that all parties in the Commission case consent to the requested attendance.  
4

5 *History Note:* Authority G.S. 97-80; 143-296; 143-300; Rule 4 of Rules for Mediated Settlement Conferences and  
6 Other Settlement Procedures in Superior Court Civil Actions;  
7 *Eff. January 16, 1996;*  
8 *Amended Eff. October 1, 1998;*  
9 *Recodified from 04 NCAC 10A .0616;*  
10 *Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;*  
11 *Recodified from 04 NCAC 10G .0104 Eff. June 1, 2018;*  
12 *Emergency Amendment Eff. June 16, 2020;*  
13 *Amended Eff. August 1, 2020;*  
14 *Temporary Amendment Eff. August 28, 2020;*  
15 *Amended Eff. March 1, 2021;*  
16 *Amended Eff. January 1, 2023.*  
17  
18

## Burgos, Alexander N

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**Subject:** FW: 11 NCAC 23G .0104 - Rules Review Commission

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**From:** Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Sent:** Tuesday, December 13, 2022 4:54 PM  
**To:** Cammarano, Gina <gina.cammarano@ic.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: 11 NCAC 23G .0104 - Rules Review Commission

Gina,

Thanks for sending these. A few more questions...

- In (a)(2)(D), the Item states the Commission can compel attendance of an employer's representative when "necessary to resolve matters in dispute in the subject action" in a worker's compensation case. The request asked what the criteria for "necessity" is. A definite framework needs to be established under which a party is characterized as "necessary".
  - o In your response, you cited G.S. 97-91 and 11 NCAC 23G .0111.
    - In G.S. 97-91, the Commission is given authority to determine all "questions". "Questions" are undefined, but, within the Article, questions of law, questions of fact, and questions at issue arise. Here, (a)(2)(D) does deal with a question of law. However, G.S. 97-80 appears to specifically deal with party participation, stating, "The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division..." The Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions deals with party attendance in Rule 4 but fails to have a catch-all "substantially similar" to (a)(2)(D). Therefore, the rule seems to be outside of the IC's statutory authority.
    - Likewise, 11 NCAC 23G .0111 deals exclusively with how motions are to be filed, served, and orders to be issued. That rule has nothing to do with substantively how parties are determined to be "necessary" and certainly does not establish a framework by which motions are ruled upon. Without such, the Item becomes ambiguous and nothing more than a case-by-case determination.
- The above analysis applies to (a)(8) as well.
- In (a)(7), line 33, the change request may have been misunderstood. It should read, "a representative of each of defendant's..."
- In (b), line 33, considering adding "and editions" after "amendments" due to the nature of the material. If the Rules are not amended by the Supreme Court, but are altered as a whole edition, this Rule would not apply.
- In (g), the language is overly broad to include "any person". You replied to the request with "(2) any person who is not a party in a workers' compensation case but who is a party in a related case pending in a forum other than the Industrial Commission". From where did this definition come? G.S. 97-2(4) states "'Person' means individual, partnership, association or corporation." This would be satisfactory if placed within this Rule. The language of this Rule was pulled verbatim from the Rules for Mediated Settlement Conferences, however. Because the statutory definition, language of the Rule, and statement on the Rule do not seem to align, the Rule seems to be ambiguous.
- The Rule for Mediated Settlement is not "Authority" and should be removed.

Lawrence Duke

Counsel, NC Rules Review Commission  
Office of Administrative Hearings  
(984) 236-1938

## Burgos, Alexander N

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**From:** Cammarano, Gina  
**Sent:** Monday, December 12, 2022 11:28 AM  
**To:** Duke, Lawrence  
**Cc:** Burgos, Alexander N  
**Subject:** RE: 11 NCAC 23G .0104 - Rules Review Commission  
**Attachments:** Industrial Commission - 12.2022 - 11 NCAC 23G - Change Requests- Industrial Commission Responses.docx; 11 NCAC 23G .0104.docx

Good morning,

Thanks for your questions about our Rule and for your helpful guidance. I've attached our responses (in red under each of your questions), as well as a copy of the resubmitted Rule with the changes that I hope address your questions and requests for change.

Please let me know if you have any other questions or if there's anything else in the Rule that you think needs to be changed.

Kind regards,  
Gina



**GINA CAMMARANO**  
RULEMAKING COORDINATOR  
**NORTH CAROLINA INDUSTRIAL COMMISSION**  
1240 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1240  
PHONE 919-807-2524 FAX 919-715-0282  
GINA.CAMMARANO@IC.NC.GOV  
WWW.IC.NC.GOV

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**From:** Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Sent:** Wednesday, December 7, 2022 12:49 PM  
**To:** Cammarano, Gina <gina.cammarano@ic.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** 11 NCAC 23G .0104 - Rules Review Commission

Good afternoon,

I'm the attorney who reviewed the Rule submitted by the Industrial Commission for the December 2022 Rules Review Commission meeting. The RRC will formally review this Rule at its meeting on Thursday, December 15, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

I have attached my requests for changes. Please submit the revised Rule and form to me via email, no later than 5:00 p.m. on Monday, December 12, 2022. In the meantime, please let me know if you have any questions or concerns.



Thank you,  
**Lawrence Duke**

Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings

[Lawrence.Duke@oah.nc.gov](mailto:Lawrence.Duke@oah.nc.gov)

(984) 236-1938

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23G .0104

**DEADLINE FOR RECEIPT: Monday, December 12, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a)(2)(D), how is the determination made regarding whether a representative is “necessary to resolve the matters in dispute” and what are the bases for such a determination?*

*Under (a)(2)(D), the determination that an employer representative is “necessary to resolve the matters in dispute” is made by the Industrial Commission’s Dispute Resolution Coordinator following a careful consideration of a motion by a party who seeks to compel an employer representative to attend the mediation.*

*Pursuant to G.S. §97-91, all questions/disputes arising under the Workers’ Compensation Act “shall be determined by the Commission” if the parties cannot agree to a resolution of the question or dispute. Many of these determinations are made by the Commission via the ruling on a motion filed by a party.*

*Rule 11 NCAC 23G .0111 governs the filing and handling of motions under Subchapter G of the Industrial Commission’s rules, which would include motions to compel the attendance of an employer representative.*

*Like all other determinations made by the Industrial Commission following the motion of a party, the (a)(2)(D) determination in a given case is based on the particular facts of the case and a weighing of the evidence presented.*

*In (a)(5), line 22, what individual “Board” is referenced? Does this refer to a specific board, as is suggested by capitalization, or generally applicable to a relevant governmental board?*

*It appears that “Board” should not be capitalized in (a)(5). In this rule, “Board” is referring to a relevant governmental board, not a specific board. (For example, in City of Raleigh cases, the terms of a proposed workers’ compensation settlement have to be approved by the Raleigh City Council. So in City of Raleigh workers’ compensation cases, the Raleigh City Council is the “board” referenced in the rule). Thank you for bringing this to our attention. In the resubmitted rule, we have uncapitalized the word in (a)(5), line 22.*

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: December 7, 2022

Similarly, in line 24, what “Board” is referenced? Here, “the Board” is used, rather than “a Board”.

*The reason “the” is used rather than “a” in front of the word “Board” here is that the sentence is referring to the relevant governmental board mentioned on line 22. It appears that this “Board” should be uncapitalized, too, and we have done so in the resubmitted rule.*

Also, in lines 24-25, the sentence seems to indicate when a settlement occurs in which G.S. 143-295 is triggered, by way of settlement less than \$25,000 between the Attorney General and claimant, the stated interested parties need not attend the settlement conference. Is this correct?

*This rule and its reference to 143-295 is referring to settlements that are more than \$25,000, as well as settlements involving claims of infants or persons non sui juris. (Claims involving settlements of less than \$25,000 may be settled “without the approval of the Industrial Commission,” pursuant to G.S. §143-295(a), so those claims would not come under the jurisdiction of the Industrial Commission’s mediation program).*

If so, consider rewriting the sentence so as to clarify the triggering of a G.S. 143-295 settlement. To provide clarification, we suggest rewriting this sentence as follows: “In claims with settlements subject to the review and approval by the Industrial Commission under Pursuant ~~to~~ G.S. 143-295, an employee or agent of the named governmental entity or agency is not required to attend the mediated settlement conference.” This rewrite has been made in the resubmitted rule.

Additionally, in lines 26-27, what does it mean for the Attorney General to “attempt to make an employee or agent... available via telecommunication”? By what mechanisms and to what extent shall efforts be made?

*“Telecommunication” in lines 26-27 historically has been interpreted to mean via telephone, conference call, speaker telephone, or videoconferencing. The “attempt” to be made by the Attorney General historically has been interpreted to mean a good faith attempt, meaning an honest, reasonable attempt.*

*We are not aware of any confusion on the part of our regulated public or disputes that have arisen with regard to the meaning of telecommunication or the nature and extent of the Attorney General’s obligation to attempt to make an employee or agent of the named governmental entity or agency available via telecommunication.*

In (a)(7), line 32, consider removing “each” or adding “of” preceding “each”.

*In (a)(7), line 33, the word “of” already precedes the word “each.” Please let us know if we are misunderstanding this request.*

Also, on page 2, line 1, are there any required methods or limitations on the form of “communicat[ion]” between the representative and decision making authority? For example, (a)(5) limits efforts to any delay and there are numerous conceivable methods of communication which are tedious or slow.

*Because the rule mandates the ability to communicate “during the conference,” the rule historically has been interpreted to require that the communication be of a type that can be conducted in real time during the mediation conference, such as communication via telephone, email, text, or videoconference. We are not aware of any confusion on the part of our regulated*

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: December 7, 2022

*public or disputes that have arisen with regard to what it means to be required to “communicate during the conference” with persons who have decision making authority.*

*In (a)(8), remove the comma after “or carriers” to avoid breaking the dependent clause from the independent clause preceding it.*

*Removed comma.*

*Also, in lines 6 and 11 of (a)(8), how is the determination of “necessary” made, similar to the request for change in (a)(2)(D)?*

*Under (a)(8), the determination that the representative’s attendance is “necessary for purposes of resolving the matters in dispute in the subject action” is made by the Industrial Commission’s Dispute Resolution Coordinator following a careful consideration of a motion by a party who seeks to compel a representative of a party, employer, or carrier who may be obligated to pay all or part of the claim but who is not required to attend the mediation pursuant to Subparagraphs (1) through (6) of Rule 11 NCAC 23G .104(a).*

*Pursuant to G.S. §97-91, all questions/disputes arising under the Workers’ Compensation Act “shall be determined by the Commission” if the parties cannot agree to a resolution of the question or dispute. Many of these determinations are made by the Commission via the ruling on a motion filed by a party.*

*Rule 11 NCAC 23G .0111 governs the filing and handling of motions under Subchapter G of the Industrial Commission’s rules, which would include motions to compel attendance under (a)(8).*

*Like all other determinations made by the Industrial Commission following the motion of a party, the (a)(8) determination in a given case is based on the particular facts of the case and a weighing of the evidence presented.*

*In (b), is the added second sentence and the sentence following referring to the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions, as cited in Authority? Make clear what approved “method” is being required and incorporate such required method.*

*Yes, these sentences refer to the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions, which are the Superior Court mediation rules approved by the North Carolina Supreme Court to which the Industrial Commission mediation rules need to be “substantially similar,” pursuant to G.S. §97-80(c).*

*We have now changed the wording in the proposed amendment to (b) to specifically reference Rule 4 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions and to incorporate by reference Rule 4 and any subsequent amendments to Rule 4 into our rule. The change is reflected in the resubmitted rule.*

*In (c), what is the criteria for determining whether an “appropriate case[]” exists for alternative methods of communication?*

*When there is not consent of the parties, the Industrial Commission’s Dispute Resolution Coordinator can, following a motion by a party, make a determination pursuant to G.S. §97-91 and Rule 11 NCAC 23G .0111 allowing a party or insurance carrier representative who*

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: December 7, 2022

*normally would be required to attend the conference in person to attend via telephone, conference call, speaker telephone, or videoconference.*

*Like all other determinations made by the Industrial Commission following the motion of a party, this determination is made by the Dispute Resolution Coordinator in a given case based on the particular facts of the case and a weighing of the evidence presented.*

*Also, in line 36, remove the semi-colon and capitalize “the”.  
Requested changes have been made in resubmitted rule.*

*Additionally, on page 3, line 4, remove the parentheticals to avoid an ambiguity.  
Requested changes have been made in resubmitted rule.*

*In (d), is there a manner by which a “copy” shall be provided to the employer and any carrier? There is no particular manner that is required. The rule requires that the copy be provided within a certain timeframe (within seven days after the receipt of an order for a mediated settlement conference), but so long as the copy is provided within the required timeframe, the manner by which the copy is provided is left up to the carrier or self-insured named in the order. Typically, the copy is provided by email, but it also could be faxed, mailed, or hand-delivered.*

*Also, what is a “related third-party tortfeasor claim[]”?  
Sometimes there is a companion third-party tort claim with a workers’ compensation claim. For example, there may be a car accident that happened on-the-job, and the third-party tortfeasor is the allegedly at-fault driver whose vehicle collided with the vehicle of the employee who was involved in the on-the-job car accident.*

*In (e), how is the “parties’ expense” calculated and what rule is the calculation pursuant to? The parties’ expense for the electronic or stenographic recording of a mediated settlement agreement is calculated based on the actual cost of the electronic or stenographic recording. Pursuant to G.S. 97-80(c), the Industrial Commission has the authority to determine the manner in which payment of the costs associated with a mediated settlement conference are assessed. In this case, if the parties want to stipulate to the agreement reached at the mediated settlement conference and have that stipulation electronically or stenographically recorded, they are free to do so at their expense, meaning whatever the actual cost is for the recording.*

*Does paragraph (f) do anything beyond 11 NCAC 23G .0107?  
Paragraph (f) makes it clear that the payment of the mediator’s fee is one of the duties of the parties, representatives, and attorneys in a mediation (which is the scope of Rule 11 NCAC 23G .0104).*

*Does this permit payment agreements when the mediator is not agreed to by the parties as is found in .0107(a)?  
No. When the mediator is not agreed to/stipulated to by the parties under Rule 11 NCAC 23G .0107(a), the mediator’s payment (in terms of the per hour rate that the mediator may charge for the conference fees, the mediator’s one-time administrative fee, and any postponement fees allowed) is governed by Rule 11 NCAC 23G .0107(b).*

*In (g), who is permitted to file an “application”? Who is subsumed by “any... person”?*

*An application (meaning a motion) may be filed by: (1) any party in a workers’ compensation case; or (2) any person who is not a party in a workers’ compensation case but who is a party in a related case pending in a forum other than the Industrial Commission.*

*Also, what is the criteria for the “order... to attend” issued in the “interest of justice”?*

*All orders entered by the Industrial Commission in the interest of justice following the motion of a party are based on the particular facts of the case, a weighing of the evidence presented, and the determination by the Commission that the order clearly needs to be entered to promote fairness and equity.*

*Additionally, what is the agency’s authority to make an order “regardless of the forum” which goes beyond a Commission case, based on the plain language of the Rule?*

*The Industrial Commission’s mediation rules are required by statute (G.S. §97-80(c)) to be substantially similar to the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions. Rule 4(e) of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions allows the senior resident superior court judge to order an attorney or party in a pending superior court action to attend a mediation conference that may be convened in another pending case “regardless of the forum.” Therefore, the Industrial Commission not only has authority to have a mediation rule allowing such an order but, arguably, is required to have a mediation rule allowing such an order.*

*Furthermore, paragraph (g) does not reference “related” cases in the substance of the rule or detail what parties or cases can be ordered into attendance. This permits unrelated parties or persons to be ordered. Please revise.*

*Revision made to add the word “related” on line 33 of page 3 of 4 in paragraph (g). The word “related” has been added in the resubmitted rule between the words “another” and “pending” to clarify that the case must be related to the Commission case (as supported by the title of paragraph (g), which is “Related Cases,”) and to better align this part of the rule with the later part of the rule that mentions a “related” case (line 1, page 4 of 4 in paragraph (g)).*

*In the History Note, Authority section, does Rule 4 of Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions provide authority for this Rule?*

*Rule 4 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions is referenced in the History Note, Authority Section because G.S. §97-80(c) requires the Industrial Commission mediation rules to be substantially similar to the mediation rules approved by the Supreme Court for use in the Superior Court division. The title of the Superior Court mediation rules that our mediation rules are required to substantially track is the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions, and Rule 4 is the companion rule to our Rule 11 NCAC 23G .0104.*

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: December 7, 2022

*Or, alternatively, is this simply reference to externally adopted rules the agency wishes to adopt or follow in a similar manner? See request for change in (b). Consider incorporating by reference.*

*We have now changed the wording in the proposed amendment to (b) to specifically reference Rule 4 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions and to incorporate by reference Rule 4 and any subsequent amendments to Rule 4 into our rule. The change is reflected in the resubmitted rule.*

*NOTE: Incorporation by reference statute, G.S. 150B-21.6, does not specifically permit incorporation by reference of a court's adopted policy or rules, but does permit incorporation "(2) All or part of a code, standard, or regulation adopted by... a generally recognized **organization or association.**"*

Please retype the rule accordingly and resubmit it to our office electronically.



1 11 NCAC 23G .0104 is amended **with changes** as published in 37:6 NCR 441-443 as follows:

2  
3 **11 NCAC 23G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS**

4 (a) Attendance. The following persons shall attend the mediated settlement conference:

- 5 (1) all individual parties;
- 6 (2) in a workers' compensation case, a representative of the employer at the time of injury if:
  - 7 (A) the employer, instead of or in addition to the insurance company or administrator, has
  - 8 decision-making authority with respect to settlement;
  - 9 (B) the employer is offering the claimant employment and the suitability of that employment
  - 10 is in issue;
  - 11 (C) the employer and the claimant have agreed to simultaneously mediate non-compensation
  - 12 issues arising from the injury; or
  - 13 (D) the Commission orders the employer representative to attend the conference if the
  - 14 representative's attendance is necessary to resolve matters in dispute in the subject action;
- 15 (3) an officer, employee, or agent of any party that is not a natural person or a governmental entity who
- 16 is not the party's outside counsel and who has the authority to decide on behalf of the party whether
- 17 and on what terms to settle the action;
- 18 (4) in a workers' compensation case, an employee or agent of any party that is a governmental entity
- 19 who is not the party's outside counsel or Attorney General's counsel responsible for the case and
- 20 who has the authority to decide on behalf of the party and on what terms to settle the action;
- 21 (5) when the governing law prescribes that the terms of a proposed settlement may be approved only
- 22 by a **Board board**, an employee or agent who is not the party's outside counsel or Attorney General's
- 23 counsel responsible for the case and who has the authority to negotiate on behalf of and to make a
- 24 recommendation to the **Board board**. Pursuant to **In claims with settlements subject to the review**
- 25 **and approval by the Industrial Commission under** G.S. 143-295, an employee or agent of the named
- 26 governmental entity or agency is not required to attend the mediated settlement conference. The
- 27 Attorney General shall attempt to make an employee or agent of the named governmental entity or
- 28 agency in a State tort claim available via telecommunication, and mediation shall not be delayed
- 29 due to the absence or unavailability of the employee or agent of the named governmental entity or
- 30 agency;
- 31 (6) the counsels of record. Appearance by counsel does not dispense with or waive the required
- 32 attendance of the parties listed in Subparagraphs (1) through (4);
- 33 (7) a representative of each defendant's primary workers' compensation or liability insurance carrier or
- 34 self-insured that may be obligated to pay all or part of any claim presented in the action. Each carrier
- 35 or self-insured shall be represented at the conference by an officer, employee, or agent who is not
- 36 the party's outside counsel and who has the authority to decide on behalf of the carrier or self-insured
- 37 whether and on what terms to settle the action, or who has been authorized to negotiate on behalf of



1 the carrier or self-insured and can communicate during the conference with persons who have the  
2 decision making authority; and

3 (8) by order of the Commission, other representatives of parties, employers, or carriers carriers, who  
4 may be obligated to pay all or part of any claim presented in the action and who are not required to  
5 attend the conference pursuant to Subparagraphs (1) through (6) of this Paragraph, if the  
6 Commission determines that the representative's attendance is necessary for purposes of resolving  
7 the matters in dispute in the subject action. Any employer or carrier who may be obligated to pay  
8 all or part of any claim presented in the action and who is not required to attend the mediated  
9 settlement conference pursuant to Subparagraphs (1) through (6) of this Paragraph or by  
10 Commission orders, may attend the conference if the employer or carrier elects to attend. If, during  
11 the conference, the mediator determines that the attendance of one or more additional persons is  
12 necessary to resolve the matters in dispute in the subject action, the mediator may recess the  
13 conference and reconvene the conference at a later date and time to allow the additional person or  
14 persons to attend.

15 (b) Any party or person required to attend a mediated settlement conference shall attend the conference until an  
16 agreement is reduced to writing and signed as provided in Paragraph (e) of this Rule, or until an impasse has been  
17 declared. ~~"Attendance" shall mean in person attendance whenever the mediation rules approved by the North Carolina  
18 Supreme Court that are in effect at the time of the mediation for use in the Superior Court division require in person  
19 attendance. During any time that attendance means in person attendance, any party or person, including the mediator,  
20 may have the in person attendance requirement excused or modified by agreement of all the parties and persons  
21 required to attend the mediation conference, including the mediator, or by order of the Commission in the interests of  
22 justice upon motion of a party and notice to all parties and persons required to attend the conference, including the  
23 mediator. "Attendance" shall mean attendance using remote technology whenever the mediation rules approved by  
24 the North Carolina Supreme Court that are in effect at the time of the mediation for use in the Superior Court division  
25 require attendance through the use of remote technology. During any time that attendance means attendance through  
26 the use of remote technology, any party or person required to attend the conference, including the mediator, may have  
27 the remote technology attendance requirement excused or modified by agreement of all parties and persons required  
28 to attend the conference, including the mediator, or by order of the Commission in the interests of justice upon motion  
29 of a party and notice to all parties and persons required to attend the conference, including the mediator. The attendance  
30 method for Industrial Commission mediations shall be the same as the attendance method set forth in the mediation  
31 rules approved by the North Carolina Supreme Court that are in effect at the time of the mediation for use in the  
32 Superior Court division. Rule 4 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures  
33 in Superior Court Civil Actions, which is hereby incorporated by reference and includes subsequent amendments. A  
34 copy of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil  
35 Actions may be obtained at no charge from the North Carolina Judicial Branch website, at  
36 [https://www.nccourts.gov/courts/supreme-court/court-rules/rules-for-mediated-settlement-conferences-and-other-  
settlement-procedures-in-superior-court-civil-actions](https://www.nccourts.gov/courts/supreme-court/court-rules/rules-for-mediated-settlement-conferences-and-other-<br/>37 settlement-procedures-in-superior-court-civil-actions), or upon request at the main office of the Industrial Commission.~~

1 located on the 6<sup>th</sup> floor of the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603, between  
2 the hours of 8:00 a.m. and 5 p.m. Monday through Friday, excluding holidays established by the State Human  
3 Resources Commission. All parties and persons required to attend the conference, including the mediator, shall comply  
4 with all public health and safety requirements set forth in the mediation rules approved by the North Carolina Supreme  
5 Court that are in effect at the time of the mediation for use in the Superior Court division.

6 (c) In appropriate cases, the Commission or the mediator, with the consent of the parties, may allow a party or  
7 insurance carrier representative who is required to attend a mediated settlement conference in person under this Rule  
8 to attend the conference by telephone, conference call, speaker telephone, or videoconferencing. videoconferencing;  
9 ~~the~~ The attending party or representative shall bear all costs of the telephone calls or videoconferencing. In addition,  
10 the mediator may communicate directly with the insurance representative with regard to matters discussed in  
11 mediation, and the mediator may set a subsequent mediated settlement conference at which all parties and  
12 representatives shall attend the mediated settlement conference in person, subject to Paragraph (b) of this Rule. The  
13 failure to appear by telephone or videoconferencing in accordance with this Paragraph shall subject the responsible  
14 ~~party(ies) party~~ or ~~representative(s) representative~~ to sanctions pursuant to Rule .0105 of this Subchapter.

15 (d) Notice of Mediation Order. Within seven days after the receipt of an order for a mediated settlement conference,  
16 the carrier or self-insured named in the order shall provide a copy of the order to the employer and all other carriers  
17 who may be obligated to pay all or part of any claim presented in the workers' compensation case or any related third-  
18 party tortfeasor claims, and shall provide the mediator and the other parties in the action with the name, address, and  
19 telephone number of all such carriers.

20 (e) Finalizing Agreement. If an agreement is reached in the mediated settlement conference, the parties shall reduce  
21 the agreement to writing, specifying all terms of the agreement that bear on the resolution of the dispute before the  
22 Commission, and shall sign the agreement along with their counsel. The parties may use IC Form MSC8, Mediated  
23 Settlement Agreement, or MSC9, Mediated Settlement Agreement – Alternative Form, for this purpose. Execution by  
24 counsel of a mediated settlement agreement for an employer or carrier who does not physically attend the mediated  
25 settlement conference shall be deemed to be in compliance with this Rule and 11 NCAC 23A .0502. By stipulation of  
26 the parties and at the parties' expense, the agreement may be electronically or stenographically recorded. All  
27 agreements for payment of compensation shall be submitted for Commission approval in accordance with 11 NCAC  
28 23A .0501 and .0502.

29 (f) Payment of Mediator's Fee. The mediator's fee shall be paid at the conclusion of the mediated settlement  
30 conference, unless otherwise provided by Rule .0107 of this Subchapter, or by agreement with the mediator.

31 (g) Related Cases. Upon application by any party or person and upon notice to all parties, the Commission may, in  
32 the interests of justice, order an attorney of record, party, or representative of an insurance carrier who may be liable  
33 for all or any part of a claim pending in a Commission case to attend a mediated settlement conference convened in  
34 another related pending case, regardless of the forum in which the other case may be pending, provided that all parties  
35 in the other pending case consent to the attendance ordered pursuant to this Paragraph. Any disputed issues concerning  
36 such an order shall be addressed to the Commission's Dispute Resolution Coordinator. Unless otherwise ordered, any  
37 attorney, party, or carrier representative who attends a mediated settlement conference pursuant to this Paragraph shall

1 not be required to pay any of the mediation fees or costs related to that conference. Requests that a party, attorney of  
2 record, or insurance carrier representative in a related case attend a mediated settlement conference in a Commission  
3 case shall be addressed to the court or agency where the related case is pending, provided that all parties in the  
4 Commission case consent to the requested attendance.

5  
6 *History Note: Authority G.S. 97-80; 143-296; 143-300; Rule 4 of Rules for Mediated Settlement Conferences and*  
7 *Other Settlement Procedures in Superior Court Civil Actions;*  
8 *Eff. January 16, 1996;*  
9 *Amended Eff. October 1, 1998;*  
10 *Recodified from 04 NCAC 10A .0616;*  
11 *Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;*  
12 *Recodified from 04 NCAC 10G .0104 Eff. June 1, 2018;*  
13 *Emergency Amendment Eff. June 16, 2020;*  
14 *Amended Eff. August 1, 2020;*  
15 *Temporary Amendment Eff. August 28, 2020;*  
16 *Amended Eff. March 1, 2021;*  
17 *Amended Eff. January 1, 2023.*

## Burgos, Alexander N

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**From:** Cammarano, Gina  
**Sent:** Wednesday, December 7, 2022 1:26 PM  
**To:** Duke, Lawrence  
**Cc:** Burgos, Alexander N  
**Subject:** RE: 11 NCAC 23G .0104 - Rules Review Commission

Thank you! I'll get to work on reviewing your requests for changes and answering all of your questions right away.

Have a great day!

Gina



**GINA CAMMARANO**  
RULEMAKING COORDINATOR  
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**From:** Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Sent:** Wednesday, December 7, 2022 12:49 PM  
**To:** Cammarano, Gina <gina.cammarano@ic.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** 11 NCAC 23G .0104 - Rules Review Commission

Good afternoon,

I'm the attorney who reviewed the Rule submitted by the Industrial Commission for the December 2022 Rules Review Commission meeting. The RRC will formally review this Rule at its meeting on Thursday, December 15, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

I have attached my requests for changes. Please submit the revised Rule and form to me via email, no later than 5:00 p.m. on Monday, December 12, 2022. In the meantime, please let me know if you have any questions or concerns.

Thank you,  
**Lawrence Duke**

Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
[Lawrence.Duke@oah.nc.gov](mailto:Lawrence.Duke@oah.nc.gov)

(984) 236-1938

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