

SUBCHAPTER 23E – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION

SECTION .0100 – ADMINISTRATION

11 NCAC 23E .0101 INSTRUCTIONS FOR FILING A PETITION FOR RULE-MAKING

(a) Any person may petition the Commission to adopt a new rule, or amend or repeal an existing rule by submitting a rule-making petition to the Commission at 1240 Mail Service Center, Raleigh, NC 27699-1240. The petition must be titled "Petition for Rule-making" and must include the following information:

- (1) the name and address of the person submitting the petition;
- (2) a citation to any rule for which an amendment or repeal is requested;
- (3) a draft of any proposed rule or amended rule;
- (4) an explanation of why the new rule or amendment or repeal of an existing rule is requested and the effect of the new rule, amendment, or repeal on the procedures of the Commission; and
- (5) any other information the person submitting the petition considers relevant.

(b) The Commission must decide whether to grant or deny a petition for rule-making within 120 days of receiving the petition. In making the decision, the Commission shall consider the information submitted with the petition and any other relevant information.

(c) When the Commission denies a petition for rule-making, a written notice of the denial must be sent to the person who submitted the request. The notice must state the reason for the denial. When the Commission grants a rule-making petition, the Commission must initiate rule-making proceedings and send written notice of the proceedings to the person who submitted the request.

History Note: Authority G.S. 97-73; 150B-20;
Eff. January 1, 1996;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10E .0101 Eff. June 1, 2018;
Amended Eff. April 1, 2020.

11 NCAC 23E .0102 MAILING LIST

(a) Any person or agency desiring to be placed on the mailing list for the Commission's rule-making notices issued pursuant to G.S. 150B-21.2 may file a request in writing to the Chairperson of the Commission at 1240 Mail Service Center Raleigh, NC 27699-1240.

(b) The request shall:

- (1) include the person's name and address;
- (2) specify the subject areas within the authority of the Commission for which notice is requested; and
- (3) state the calendar year(s) for which the notice is desired.

History Note: Authority G.S. 97-73; 97-80(a); 150B-21.2(d);
Eff. July 1, 2014;
Recodified from 04 NCAC 10E .0102 Eff. June 1, 2018;
Amended Eff. April 1, 2020.

11 NCAC 23E .0103 ADMISSION OF OUT-OF-STATE ATTORNEYS TO APPEAR BEFORE THE COMMISSION

(a) Attorneys residing in and licensed to practice law in another state who seek to be admitted to practice before the Commission to represent a client in a claim pursuant to G.S. 84-4.1 shall file a motion with the Commission that complies with the requirements of G.S. 84-4.1. The North Carolina attorney with whom the out-of-state attorney associates pursuant to G.S. 84-4.1(5) may file the motion instead as long as it complies with the requirements of G.S. 84-4.1.

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

- (1) If the motion is filed in a claim that is set for hearing before or pending decision by a Deputy Commissioner or the Full Commission, the motion shall be filed with the Deputy Commissioner or chair of the Full Commission panel, respectively.
- (2) If the motion is filed in a claim involving a form application regarding a death claim, the motion shall be filed with the Director of Claims Administration.

- (3) If the motion is filed in a claim involving a stipulated Opinion and Award regarding a death claim, the motion shall be filed with the Chief Deputy Commissioner.
- (c) A proposed Order granting *pro hac vice* admission that includes the facsimile numbers for all counsel of record shall be provided with the motion.
- (d) Following review of the motion, the Commission shall issue an Order granting or denying the motion. The Commission has the discretionary authority to deny such motions even if they comply with the requirements of G.S. 84-4.1.
- (e) Upon receipt of an Order granting a motion for *pro hac vice* admission, the admitted attorney or the associated North Carolina attorney shall pay the fees to the North Carolina State Bar and General Court of Justice required by G.S. 84-4.1 and file a statement with the Executive Secretary documenting payment of said fees and the submission of any *pro hac vice* admission registration statement required by the North Carolina State Bar.

History Note: Authority G.S. 84-4.1; 97-80(a);
Eff. July 1, 2014;
Recodified from 04 NCAC 10E .0103 Eff. June 1, 2018.

11 NCAC 23E .0104 SECURE LEAVE PERIODS FOR ATTORNEYS

- (a) Any attorney may request one or more secure leave periods each year as provided in this Rule.
- (b) For the purpose of this Paragraph only, a "secure leave period" is defined as a partial calendar week or a complete calendar week. Within a calendar year, an attorney is entitled to obtain secure leave periods totaling up to 15 business days for any purpose.
- (c) For the purpose of this Paragraph only, a "secure leave period" is defined as a complete calendar week. Within a 24-week period surrounding the birth or adoption of an attorney's child, that attorney is entitled to have the benefit of up to 12 additional secure leave periods.
- (d) To request a secure leave period, an attorney shall file a written request, by letter or motion, containing the information required by Paragraph (e) of this Rule with the Office of the Chair within the time period provided in Paragraph (f) of this Rule. Upon such filing, the Chair shall review the request. If the request is made pursuant to Paragraph (b) or Paragraph (c) of this Rule and the request complies with Paragraphs (e) and (f) of this Rule, the Chair shall issue a letter allowing the requested secure leave period. The attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding before the Commission during a secure leave period that is allowed.
- (e) The request shall contain the following information:
- (1) the attorney's name, mailing address, telephone number, email address, and state bar number;
 - (2) the date(s) for which secure leave is being requested;
 - (3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule;
 - (4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering, or interfering with the disposition of any matter in any pending action or proceeding;
 - (5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the designated secure leave period; and
 - (6) for secure leave requests that arise under Paragraph (c) of this Rule, the expected birth date or adoption date of the child.
- (f) The request shall be filed:
- (1) no later than 90 days before the beginning of the secure leave period; and
 - (2) before any trial, hearing, deposition, or other matter has been scheduled, peremptorily set, or noticed for a time during the designated secure leave period.
- (g) The Chair may, as set forth in Rule .0301 of this Subchapter, make exception to the 15-day aggregate limit set forth in Paragraph (b) of this Rule, the requirement set forth in Subparagraph (e)(5) of this Rule, and the limitations set forth in Paragraph (f) of this Rule. An attorney requesting that the Chair make an exception under this Paragraph shall inform the Chair of all known actions or proceedings involving that attorney that are scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period. The attorney also shall provide notice to all opposing parties or, if represented, opposing counsel of record in all cases subject to the jurisdiction of the Industrial Commission of the beginning and ending dates of the requested secure leave period and of all known actions or proceedings involving that attorney that are scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period.

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

(i) After a secure leave period has been allowed pursuant to this Rule, if any deposition is noticed for a time during the secure leave period, the attorney shall serve on the party that noticed the deposition a copy of the letter allowing the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period.

*History Note: Authority G.S. 97-80(a);
Eff. July 1, 2014;
Recodified from 04 NCAC 10E .0104 Eff. June 1, 2018;
Amended Eff. December 1, 2020.*

SECTION .0200 – FEES

11 NCAC 23E .0201 DOCUMENT AND RECORD FEES

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

(b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter 132 of the North Carolina General Statutes, transcripts of Commission proceedings, copies of recordings of Commission proceedings, copies of exhibits from Commission proceedings, and copies of all other public documents are available at the "actual cost" as defined by G.S. 132-6.2(b). The Commission shall provide the "actual cost" on the Commission's website.

(c) Certified copies are available upon request at a cost of one dollar (\$1.00) per certification in addition to any other applicable cost for the document. Electronic copy certification is not available.

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

(e) North Carolina sales tax shall be added if applicable.

*History Note: Authority G.S. 7A-305; 97-73; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300;
Eff. November 1, 2014;
Recodified from 04 NCAC 10E .0201 Eff. June 1, 2018.*

11 NCAC 23E .0202 HEARING COSTS OR FEES

(a) **(Effective until July 1, 2015)** The following hearing costs or fees apply to all subject areas within the authority of the Commission:

- (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged after the hearing has been held;
- (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a specific hearing date, to be paid by the requesting party or parties;
- (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case is calendared for a specific hearing date;
- (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged after the hearing has been held; and
- (5) one hundred twenty dollars (\$120.00) if one of the following occurs after an appeal or request for review is scheduled for a specific hearing date before the Full Commission:
 - (A) the appeal or request for review is withdrawn; or
 - (B) the appeal or request for review is dismissed for failure to prosecute or perfect the appeal or request for review.

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

(a) **(Effective July 1, 2015)** The following hearing costs or fees apply to all subject areas within the authority of the Commission other than workers' compensation cases:

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

- (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a specific hearing date, to be paid by the requesting party or parties;
- (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case is calendared for a specific hearing date;
- (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged after the hearing has been held; and
- (5) one hundred twenty dollars (\$120.00) if one of the following occurs after an appeal or request for review is scheduled for a specific hearing date before the Full Commission:
 - (A) the appeal or request for review is withdrawn; or
 - (B) the appeal or request for review is dismissed for failure to prosecute or perfect the appeal or request for review.

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

History Note: Authority G.S. 97-73; 97-80; 97-88.1; 143-291.1; 143-291.2; 143-300; S.L. 2014-77; Eff. November 1, 2014; Recodified from 04 NCAC 10E .0202 Eff. June 1, 2018.

11 NCAC 23E .0203 FEES SET BY THE COMMISSION

- (a) **(Effective until July 1, 2015)** In workers' compensation cases, the Commission sets the following fees:
- (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission and, unless the parties agree otherwise, shall be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;
 - (2) three hundred dollars (\$300.00) for the processing of a Form 21 *Agreement for Compensation for Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A *Employer's Admission of Employee's Right to Permanent Partial Disability* to be paid by the employee and the employer or the employer's carrier in equal shares. The employer or the employer's carrier shall pay such fee in full when submitting the agreement to the Commission. Unless the parties agree otherwise or the award totals three thousand dollars (\$3,000) or less, the employer and the employer's carrier shall be entitled to a credit for the employee's 50 percent share of such fee against the award;
 - (3) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and
 - (4) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be Assigned for Hearing*, to be paid by the intervenor.
- (a) **(Effective July 1, 2015)** In workers' compensation cases, the Commission sets the following fees:
- (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission and, unless the parties agree otherwise, shall be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;
 - (2) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be

determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and

- (3) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 331 *Intervenor's Request that Claim be Assigned for Hearing*, to be paid by the intervenor.

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

History Note: Authority G.S. 7A-305; 97-17; 97-26(i); 97-73; 97-80; 143-291.2; 143-300; S.L 2014-77; Eff. November 1, 2014; Recodified from 04 NCAC 10E .0203 Eff. June 1, 2018.

11 NCAC 23E .0204 ACCIDENT PREVENTION AND SAFETY EDUCATIONAL PROGRAM FEES

(a) The following fees shall be assessed for accident prevention and safety educational programs:

- (1) one hundred twenty-five dollars (\$125.00) per person for an Accident Prevention Awareness (APCAP) Workshop;
- (2) seventy-five dollars (\$75.00) per person for an Advanced APCAP Workshop;
- (3) thirty dollars (\$30.00) per person for a Safety and Health Workshop;
- (4) twenty dollars (\$20.00) per person for a First Aid, CPR, and AED Course, plus fifteen dollars (\$15.00) per person for materials;
- (5) fifteen dollars per person (\$15.00) for a First Aid Course, plus twelve dollars (\$12.00) per person for materials;
- (6) fifteen dollars per person (\$15.00) for a CPR and AED Course, plus twelve dollars (\$12.00) per person for materials;
- (7) twenty dollars (\$20.00) per person for a Defensive Driving Course, plus four dollars (\$4.00) per person for materials;
- (8) fifty dollars (\$50.00) per person for a Hazardous Waste Operations and Emergency Response (HAZWOPER) Course or Refresher Course;
- (9) thirty dollars (\$30.00) per person for a HAZWOPER Awareness Course;
- (10) twenty-five dollars (\$25.00) per person for a Work Zone Flagger Course, plus five dollars (\$5.00) for materials;
- (11) thirty dollars (\$30.00) per person for a Trenching Competent Person Course;
- (12) thirty-five dollars (\$35.00) per person for a Competent Person Scaffolding Course;
- (13) forty-five dollars (\$45.00) per person for an eight-hour National Fire Protection Association (NFPA) E Arc Flash Course;
- (14) thirty dollars (\$30.00) per person for a four-hour NFPA E Arc Flash Course;
- (15) fifty dollars (\$50.00) per person for a Safety for Supervisors Course;
- (16) one hundred fifty dollars (\$150.00) per person for a Safety Leadership Course;
- (17) a two hundred dollar (\$200.00) flat fee for a (five to eight-hour) Workplace Training;
- (18) a one hundred-fifty dollar (\$150.00) flat fee for a (three to four-hour) Workplace Training (3-4 hours); and
- (19) a one hundred dollar (\$100.00) flat fee for a (one to two-hour) Workplace Training.

(b) In addition to the fees listed in Paragraph (a), each individual or group registering for a class must pay a four dollar and ninety-five cent (\$4.95) registration processing fee to the Commission's third party vendor upon registering for an educational program listed in Paragraph (a).

History Note: Authority G.S. 97-73; 97-80; Eff. July 1, 2014; Recodified from 04 NCAC 10E .0204 Eff. June 1, 2018.

SECTION .0300 – RULES OF THE COMMISSION

11 NCAC 23E .0301 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case

pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

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

History Note: Authority G.S. 97-25.2; 97-25.4; 97-73; 97-80; 130A-425(d); 143-166.4; 143-296; 143-300; Eff. July 1, 2014;
Recodified from 04 NCAC 10E .0301 Eff. June 1, 2018.

11 NCAC 23E .0302 EMERGENCY ORDERS AND DIRECTIVES OF THE CHIEF JUSTICE OF THE NORTH CAROLINA SUPREME COURT

(a) This Rule applies to all matters within the authority and jurisdiction of the Commission and to all Subchapters of the Commission's rules.

(b) In the interests of justice or to protect the public health or safety, the Commission may waive or modify any portion of its rules in order to bring them in conformity with an emergency Order or directive of the Chief Justice of the North Carolina Supreme Court that is in effect. The Commission shall consider the following factors in determining whether to grant the waiver or modification:

- (1) the necessity of waiving or modifying the rule; and
- (2) the impact of waiving or modifying the rule on the regulated parties and on the Commission.

If the Commission waives or modifies a rule to bring it into conformity with any emergency Order or directive of the Chief Justice of the North Carolina Supreme Court, the Commission shall post a notice of the waiver or modification of the rule on its website unless the waiver or modification is case-specific and not generally applicable to the regulated public. For a waiver or modification that is case-specific and not generally applicable to the regulated public, the Commission shall notify the parties in the case of the waiver or modification via an order of the Commission.

(c) During any period that an emergency Order or directive of the Chief Justice of the North Carolina Supreme Court authorizes the taking of oaths and verifications outside the presence of a notary public, the Commission shall accept any pleading, motion, petition, supporting affidavit, or other document with an affirmation or representation not attested to before a notary public so long as the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the same language as that allowed by the emergency Order or directive of the Chief Justice of the North Carolina Supreme Court.

(d) Any waiver or modification made pursuant to this Rule shall only remain in effect during the duration of any emergency Order or directive of the Chief Justice of the North Carolina Supreme Court upon which that waiver or modification is based.

History Note: Authority G.S. 97-80; 130A-425(d); 143-166.4; 143-296; 143-300;
Emergency Adoption Eff. November 6, 2020;
Temporary Adoption Eff. January 29, 2021;
Eff. August 1, 2021.