

**Regulatory Impact Analysis  
Codification of and/or changes to filing requirements**

Agency: North Carolina Industrial Commission  
Contact: Ashley Snyder – (919) 807-2524  
Proposed New Rule Title:  
Rules proposed for amendment: Rule 11 NCAC 23A .0609  
Rule 11 NCAC 23A .0620  
(See proposed rule text in Appendix 1)

State Impact: Yes  
Local Impact: Yes  
Private Impact: Yes  
Substantial Economic Impact: No

Statutory Authority: G.S. §§ 97-79(g), 97-80(a).

Introduction/Background:

Rule 11 NCAC 23A .0609 governs general motions practice before the Industrial Commission. The proposed rule amendments for Rule 11 NCAC 23A .0609 are intended to update the rule, provide clarifications, and add certain requirements to improve the efficiency of the motions process. In addition, the adoption of a new rule, Rule 11 NCAC 23A .0620, allows the movement of part of Paragraph (i) out of Rule 11 NCAC 23A .0609, along with a clarification applying the provision to non-motion correspondence.

Proposed Rule Changes and Their Estimated Impact:

The proposed rule additions and changes include the following:

1. *Amendment of Motions Practice rule – Rule 11 NCAC 23A .0609*
  - a. The proposed amendment to 11 NCAC 23A .0609(c)(4) provides clarification to external filers that motions submitted after the filing of a Full Commission Opinion and Award shall be addressed to the authoring Commissioner until notice of appeal is filed or the time for taking appeal expires. The added language ties Subparagraph (c)(4) with Subparagraph (b)(3) which indicates that motions shall be filed with the Executive Secretary’s Office after the time for taking appeal from an Opinion and Award has run. The rule amendment does not impact the Commission’s internal processes. The rule amendment is intended to benefit external users who might only read Subparagraph (c)(4) when filing a motion with the Full Commission. If the external user desires a ruling from the Full Commission panel that recently heard the case, the user will know the window of

opportunity to file the motion with the Full Commission. This benefit is not a one that can be monetized.

- b. The proposed new Subparagraph (d) in 11 NCAC 23A .0609 indicates to external users that motions for an award of attorney fees from an employee's ongoing disability compensation shall be directed to the Commission's Claims Administration Section. This new provision creates an exception to Paragraph (b). This type of motion has been internally routed to the Claims Administration Section for many years, instead of being handled by the Executive Secretary's Office. The rule amendment updates the rule to reflect this long-standing practice. Therefore, there is no anticipated impact on the Commission. There is also no or minimal expected cost or benefit to external filers in that the rule amendment only changes to whom such motions are to be addressed. There may be a small adjustment period for those not already addressing such motions to the Claims Administration Section, but the motions will be routed to the proper place within the Commission regardless of the addressee.
- c. The proposed amendment to Subparagraph (e) (formerly Paragraph (d)) in 11 NCAC 23A .0609 clarifies that the requirements of the provision apply to motions requesting extensions of time and motions to withdraw motions. This was the intent of the provision as it reads without the proposed amendment. However, many external filers continue to try to obtain extensions of time or to notify the Commission of the withdrawal of a motion by email correspondence. These requests are currently rejected and the parties are required to file the motions in compliance with the rule. The rule amendment is intended to improve compliance with the rule and does not create a new cost or benefit.
- d. The proposed amendment to Paragraphs (f) and (g) (formerly Paragraphs (e) and (f)) of 11 NCAC 23A .0609 is intended to encourage parties to communicate and resolve disputes prior to the filing of a motion.
  - i. Description of baseline situation:

Currently, the rule only requires that the moving party include a statement of the opposing party's position on the motion, if known. The Commission receives thousands of motions of different kinds each year. The Commission receives approximately 13,500 motions per year via electronic filing.<sup>1</sup> Approximately 2,000 of these motions are discovery motions. A requirement similar to the proposed requirement is already in place for motions to compel discovery under Rule 11 NCACC 23A .0605(9). Therefore, the rule changes will apply to an estimated 11,500 motions per year. Many of these motions already contain an indication of the opposing party's position or that an attempt was made to contact the opposing party about the issue before filing the motion. However, an estimated 30% of motions, or 3,450 motions, do not include this information and would not comply with the rule as amended.
  - ii. Description of proposed changes:

The proposed amendments remove the phrase "if known" and requires a party filing a motion to provide the opposing party's position or to indicate

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<sup>1</sup> This figure does not include medical motions which are addressed in Rule 11 NCAC 23A .0609A.

in the motion that a reasonable attempt was made to ascertain the position of the opposing party to the motion. If the moving party does not do so, the motion may be denied on that basis alone, though it could be re-filed with proper documentation.

The costs and benefits of the proposed rule change are described and estimated below.

iii. Economic impact:

As stated above, this rule change will affect an estimated 30% of motions filed, or 3,450 motions. It is likely that in some percentage of these cases the moving parties know the opposing party's position or have contacted them about the issue, but have not included the information in the motion. It is not possible to estimate this proportion with any accuracy. It will be assumed for purposes of this analysis that in half of the 3,450 motions, the information is known or the contact has been attempted, but the information is not included in the motion.

o Costs to the State through the Commission:

- It is likely that the Commission will experience a slight increase in the number of motions filed initially because there will be motion filers who do not comply with the rule for a brief period of time after the rule goes into effect. Their initial motions may be denied depending on the circumstances of the case for failure to comply and they will have to file a new motion.<sup>2</sup> Some portion of the denied motions will not be re-filed because circumstances will change in the case, such as the dispute being resolved between the parties. The only potential temporary cost to the Commission from an increase is the opportunity cost of current employees who handle the increased motions.
- Processing a motion requires an estimated average of 15 minutes of processing assistant time, starting with intake and finishing with filing an order. The processing assistants who work with motions at the Commission earn between \$30,000 and \$36,000 per year, with an average of \$33,000, or \$51,155 in total compensation.<sup>3</sup>
- The time required to review and rule on a motion can range from 5 minutes to over an hour, depending on the

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<sup>2</sup> Some noncompliant motions may not be denied on this basis if, for example, the motion involves an emergency situation or the opposing party responds to the motion with their position.

<sup>3</sup> Total compensation calculated with salary as 65.8% and benefits as 34.2%.

Benefits as a percent of total compensation reported by NC OSHR. 2016 Compensation and Benefits Report. [https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report\\_FINAL.pdf](https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report_FINAL.pdf)

Total compensation adjusted for recent 2% legislative increase.

complexity of the motion. However, a majority of motions require 30 minutes or less. Therefore, an estimated average of 20 minutes is required for the review of a motion and any response, as well as the drafting of an order. The employees who review and rule on motions at the Commission have salaries ranging from \$62,000 to \$128,000, with an average of \$95,000, or about \$147,264 in total compensation.<sup>4</sup>

- Assuming 2,080 work hours a year, the average opportunity cost of a re-filed motion would be \$6.15 in processing time and \$23.60 in attorney review time, for a total of \$29.75 per motion.
  - The number of motions that may have to be re-filed due to non-compliance with the rule is difficult to determine with any accuracy. Based on the Commission's experience, the rate of non-compliance in the first few months after the rule changes is expected to be relatively low. As demonstrated above, the cost to the Commission to process each motion is also low. Therefore, the Commission expects this change to create only a minor impact.
- Costs to the State as an employer
    - While it is unlikely that the State as an employer will have to expend additional funds to be able to comply with the proposed rule change, state employees such as attorneys and paralegals representing the State will have to spend additional time and effort to make a reasonable attempt to contact the opposing party regarding its position on the motion before filing a certain number of motions. Similarly, local government units who represent themselves before the Commission may experience a similar loss in opportunity cost. Local government may also be required to expend additional funds if represented by private law firms who charge them for additional time spent complying with the rule as amended. Local government is included in the public-sector cost analysis in this section.
    - Approximately half of the 3,450 motions likely to be affected by this rule amendment will be filed by employers or carriers. Assuming that the type of filing employer (public or private) follows the same breakdown as the type of employment in NC, about 11% of these motions could be attributed to state and local government filings and 89% to private sector.<sup>5</sup> Eleven percent of 1,725 motions is 190 motions.

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<sup>4</sup> Id.

<sup>5</sup> Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

- As stated above, it is likely that in half of the estimated 190 motions, the filing State or local government entity knows the opposing party's position or has made a reasonable attempt to ascertain it, but merely did not include the information in the motion. In such cases, the only cost imposed by the proposed rule change is the time and effort to type the information into the motion. If it is assumed that typing the required information in a motion could take 2-3 minutes and the average state legal or administrative assistant who would be drafting the motion is paid on average \$35.71 in total hourly compensation,<sup>6</sup> the total cost of added time to state and local governments as filers would be \$1.50 per motion<sup>7</sup>, or \$120.00.
- For the other 80 motions in which the filer does not know the opposing party's position, the cost will be the time to make reasonable contact with the opposing party to ascertain its position, plus \$120.00 to include the information in the motions.
- Because each case will be different, it is difficult to estimate the amount of time it would take to make a reasonable attempt to contact the opposing party about a motion. What is reasonable may differ between cases. An attorney may choose to spend an hour drafting a letter to the opposing party or may have a paralegal make a quick telephone call or send a two-sentence e-mail. For purposes of this analysis, it is assumed that an average of 10 minutes will be spent making a reasonable attempt to ascertain the opposing party's position. This work may be done by legal assistants earning \$35.71 in total hourly compensation or attorneys earning \$84.50 in total hourly compensation.<sup>8</sup> Therefore, the average cost to make the required attempt to contact the opposing party would cost between \$6.00 and \$14.10 per

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<sup>6</sup> 2017 average wage estimates for paralegals and legal assistants in North Carolina reported by NC Department of Commerce, Occupational Employment and Wages in North Carolina (OES).

<https://d4.nccommerce.com/OESSelection.aspx>

Benefits as a percent of total compensation reported by NC OSHR. 2016 Compensation and Benefits Report.

[https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report\\_FINAL.pdf](https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report_FINAL.pdf)

Total compensation adjusted for recent 2% legislative increase.

<sup>7</sup> This amount may be an actual cost in funds and may be higher for local government entities if they hire private legal counsel for workers' compensation claims as the local government entity will likely pay at a contracted rate per hour for attorney and paralegal time. Because there is no reliable way of determining how many motions are filed on behalf of local government, a separate analysis will not be conducted here.

<sup>8</sup> 2017 median wage estimates for attorneys in North Carolina reported by NC Department of Commerce, Occupational Employment and Wages in North Carolina (OES). <https://d4.nccommerce.com/OESSelection.aspx>

Benefits as a percent of total compensation reported by NC OSHR. 2016 Compensation and Benefits Report.

[https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report\\_FINAL.pdf](https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report_FINAL.pdf)

Total compensation adjusted for recent 2% legislative increase.

- motion. For 80 motions, this would amount to between \$480 and \$1,128, or an average of \$804.
- Based on the above, the total cost to state and local government of the proposed change to Paragraphs (f) and (g) (formerly Paragraphs (e) and (f)) of 11 NCAC 23A .0609 is approximately \$1,044 a year.
  - Costs to private sector filers (including private employers/carriers and employees):
    - Because private employers and carriers will hire private legal counsel to represent them, any additional time required to comply with the proposed rule changes will result in additional costs for them in the form of legal fees.
    - Employees who hire legal counsel generally pay a legal fee on a contingency basis. Therefore, the proposed changes will have no or minimal impact on the legal fees paid by employees. However, there is a potential opportunity cost for the law firms representing employees to comply with the rule.
    - Employees without legal counsel may have to expend additional time and effort in certain cases to comply with the proposed rule, but there are too many uncontrolled variables to estimate this potential cost with any accuracy.
    - As stated above, approximately half of the 3,450 motions likely to be affected by this rule amendment will be filed by employers or carriers. Assuming that the type of employer/carrier filer (public or private) follows the same breakdown as the type of employment in NC, about 11% of these motions could be attributed to state and local government filings and 89% to private sector.<sup>9</sup> Eighty-nine percent of 1,725 motions is 1,535 motions.
    - As stated above, it is likely that in half of the estimated 1,535 motions, the filing private sector employer or carrier knows the opposing party's position or has made a reasonable attempt to ascertain it, but merely did not include the information in the motion. In such cases, the only cost imposed by the proposed rule change is the time and effort to type the information into the motion. If it is assumed that typing the required information in a motion could take an average of 2-3 minutes to draft and review and a law firm charges between \$90 (paralegal estimate) and \$150 (attorney estimate), or an average of \$120, per hour,<sup>10</sup> the total annual cost of added time to private-sector motion filers would be \$5 per motion, or \$3,840.

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<sup>9</sup> See note 5.

<sup>10</sup> These hourly rates are estimates based on an informal survey of law firms. They reflect hourly costs billed to clients, not employee compensation costs.

- For the other 768 motions in which the filer does not know the opposing party's position, the cost will be the time to make reasonable contact with the opposing party to ascertain its position, plus \$3,840 to include the information in the motions.
    - Because each case will be different, it is difficult to estimate the amount of time it would take to make a reasonable attempt to contact the opposing party about a motion. What is reasonable may differ between cases. An attorney may spend an hour drafting a letter to the opposing party or may have a paralegal make a quick telephone call or send a two-sentence e-mail. For purposes of this analysis, it is assumed that an average of 10 minutes will be spent making a reasonable attempt to ascertain the opposing party's position. Using the estimated legal fee rates above, the average cost to make the required attempt to contact the opposing party would cost an estimated \$20 per motion. For 768 motions, this would amount to \$15,360.
    - Based on the above, the total cost to the private sector from the proposed change to Paragraphs (f) and (g) (formerly Paragraphs (e) and (f)) of 11 NCAC 23A .0609 is \$23,040 a year.
  - Benefits to the State through the Commission:
    - The proposed rule change is expected to benefit the Commission by reducing the number of unnecessary motions and by providing additional information in motions that will assist the deciding officer in ruling on the motion.
    - As estimated above, in about 15% of motions filed with the Commission, or 1,725 motions, the moving party knows the opposing party's position or has made a reasonable attempt to ascertain it, but has not included the information in the motion. In these cases, the benefit to the Commission will be additional information to consider in ruling on the motion. This additional information may result in a decision that is more appropriate for the circumstances of the case and may result in fewer appeals or other motions. It is not feasible to estimate a fiscal impact for this benefit.
    - Further, in another estimated 1,725 motions filed, the moving party has not made contact with the opposing party and does not know its position on the motion. In these cases, the benefit to the Commission may be fewer motions filed if contact between the parties resolves the issue in the motion or, alternatively, additional information in the motion to consider when ruling.
    - For any motion not filed due to the amended rule, the Commission would save an estimated opportunity cost in

- staff time of \$29.75 per motion. It is unknown how many motions might be resolved due to the rule change.
- Benefits to the State as an employer
    - The proposed rule change is expected to benefit the State and local government as employers by reducing the number of unnecessary motions and by providing additional information in motions that will assist the deciding officer in ruling on the motion.
    - As discussed above, the additional information may result in a decision that is more appropriate for the circumstances of the case and may result in fewer appeals or other motions. It is difficult to estimate the fiscal impact of this benefit, but it will apply to approximately 380 motions per year for public-sector employers, using the 11% figure to estimate the proportion of 3,450 motions attributable to cases involving public-sector employers.<sup>11</sup>
    - In terms of savings related to unnecessary motions avoided by the rule amendments, it is estimated that 11% of 173 motions, or 19 motions, might not be filed in cases with public-sector employers in 2019. These may be motions not filed by the employer or motions not filed by the employee to which the employer does not need to respond.
    - The amount of time required to draft and file a motion or a response to a motion varies widely on a case-by-case basis. It is estimated that an average of 1.25 hours of attorney and paralegal time is required to file a motion or a response. For 19 motions, this would amount to 23.75 hours. This work is likely a combination of attorney and paralegal time, with State employee legal assistants earning \$35.71 in total hourly compensation and State attorneys earning \$84.50 in total hourly compensation, for an average of \$60.11 per hour.
    - The total estimated savings in opportunity cost to the State based on filing or responding to fewer motions is \$1,428 in 2019.
  - Benefits to private sector (including private employers/carriers and employees)
    - The proposed rule change is expected to benefit private sector parties by reducing the number of unnecessary motions and by providing additional information in motions that will assist the deciding officer in ruling on the motion.
    - It is not possible to separate out the motions involving the different private sector groups potentially affected by the rule, but the potential savings effect for each is described as follows:

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<sup>11</sup> See note 5.



- Because private employers and carriers will hire private legal counsel to represent them, any decrease in motions due to the proposed rule changes will result in savings for them in the form of lower legal fees.
  - Employees who hire legal counsel generally pay a legal fee on a contingency basis. Therefore, the proposed changes will have no or minimal impact on the legal fees paid by employees. However, there is a potential opportunity cost savings for the law firms representing employees if the rule changes result in fewer motions filed.
  - Employees without legal counsel may experience a savings in actual and opportunity cost if the rule changes result in fewer motions needing to be filed, but there are too many uncontrolled variables to estimate this potential savings with any accuracy.
- As discussed above, the additional information may result in a decision that is more appropriate for the circumstances of the case and may result in fewer appeals or other motions. It is difficult to estimate the fiscal impact of this benefit, but it will apply to approximately 3,071 motions per year for private sector litigants, using the 89% figure to estimate the proportion of motions attributable to cases involving private sector parties.<sup>12</sup>
  - In terms of savings related to unnecessary motions avoided by the rule amendments, it is estimated that 89% of 173 motions, or 154 motions, might not be filed in cases with private sector parties in 2019. The savings may come from not having to file a motion or not having to respond to a motion.
  - The amount of time required to draft and file a motion or a response to a motion varies widely on a case-by-case basis. It is estimated that an average of 1.25 hours of attorney and paralegal time is required to file a motion or a response. For 154 motions, this would amount to 192.5 hours. This work is likely a combination of attorney and paralegal time. Using an average cost of \$120 per hour for combined private-sector attorney and paralegal time, the total estimated savings in actual or opportunity cost to the private

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<sup>12</sup> See note 5.

sector based on filing or responding to fewer motions is \$23,100 in 2019.

- e. The proposed amendment to Paragraph (g) (formerly Paragraph (f)) regarding the requirement to follow an oral motion with a written motion moves the provision to a new Paragraph (h) and adds a condition that a written motion is only required if requested by a hearing officer. Oral motions are not tracked by the Commission. They occur in informal telephone hearings or in-person hearings on an infrequent basis. It is anticipated that the rule change would result in a minimal savings because it may slightly reduce the number of cases in which a written motion must be filed following an oral motion.
- f. The proposed amendment to Paragraph (i) (former Paragraph (g)) is intended to allow the parties to agree on and file a stipulation for an extension of time to respond to a motion other than a medical motion instead of filing a motion which requires an order of the Commission to grant or deny the extension.
  - i. Baseline description: There are at least 1,560 motions for extension of time to respond to a motion filed per year. Approximately 1,279 of them would be potentially affected by this rule change, as the remaining 281 are estimated to apply to medical motions. Motions for extension of time to respond to a motion are estimated to take 20-25 minutes to draft and file. Responses to motions for extension of time to respond to a motion are infrequent. In many cases, the motions indicate that the opposing party has consented to the extension of time. Reviewing such motions and issuing orders on the motions takes an average of 10-15 minutes of processing assistant time and 5-10 minutes of staff attorney time at the Commission.
  - ii. Description of proposed changes: Allowing parties in agreement to file a stipulation for an extension of time for up to 30 days will affect a significant portion of the 1,279 motions for extension of time. As stated above, in many cases, the opposing party has already consented to the extension. There are likely many other cases in which the opposing party would agree, if asked. However, there will be some cases in which the rule change will not apply because the opposing party would not agree to an extension of time or the moving party will be seeking more than 30 days' extension.
  - iii. Economic impact:
    - o It is estimated that a large percentage of 1,279 motions will be affected by the rule change, assuming that as many parties take advantage of the rule as possible. Based on the Commission's experience, a range of 65 to 85 percent, or 831 to 1,087 motions, is reasonable to use for this analysis.
    - o Cost to the State through the Commission: No costs are anticipated because the rule change is expected to reduce the amount of work for the Commission where a stipulation is filed. In cases where the parties do not agree or a longer extension is requested, the cost will remain at the baseline level.

- Costs to State and local government:
  - Approximately half of the motions for extension of time to respond to a motion are filed by employers and carriers. The public sector portion of 416-544 motions is 11%, or 46-60 motions.<sup>13</sup> The difference in time and effort to file a motion versus a stipulation is negligible, with a stipulation likely taking slightly less time, and represents no additional cost. In approximately half of these motions, as stated above, the moving party has already obtained consent for an extension. Therefore, there would be no additional cost related to 23-30 of the motions. For the other half, contacting the other side to obtain agreement to an extension may take an estimated 10 minutes on average.
  - At an average cost of State paralegal and attorney time of \$60.11 per hour, 10 minutes per motion for 23-30 motions equates to \$230-300 in opportunity cost.
- Cost to private sector filers (including private employers/carriers and employees):
  - The private sector share of the 831 to 1,087 motions potentially affected is the 416-544 motions attributable to employees and 89% of the 416-544 motions attributable to employers and carriers<sup>14</sup>, totaling 786-1,028 motions. Similar to the public-sector analysis above, the only anticipated cost of availing oneself of the amended rule is the cost of contacting the opposing party regarding an extension in cases where a contact would not have been made under the old rule. It is anticipated that such contacts will be required in half of the cases.
  - Using an average cost of \$120 per hour for combined private-sector attorney and paralegal time and assuming an estimated 10 minutes is required on average to contact the opposing party, the estimated cost to the private sector is \$20 per motion, for an estimated range of \$15,720-20,560 total.
  - Based on the division above, the cost for employers and carriers who pay legal fees based on hourly rates will amount to \$7,400-9,680. The savings in opportunity cost for legal counsel to employees will be \$8,320-10,880.
  - The Commission receives very few motions for extension of time from unrepresented employees and does not track them. The fiscal impact of the rule change for unrepresented employees, who may not be aware of or utilize the amended rule is estimated to be *de minimis*.
- Benefit to the State through the Commission:

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<sup>13</sup> See note 5.

<sup>14</sup> See note 5.

- The baseline opportunity cost to the Commission of processing and ruling on a motion for extension of time includes approximately 10 minutes of processing assistant time and 5 minutes of attorney time. Using the figures \$24.59 in total hourly compensation for processing assistants and \$70.80 in total hourly compensation for attorneys, the total cost per motion is \$10.00.<sup>15</sup> A stipulation that complies with the amended rule will require only 3 minutes of processing assistant time, or \$1.23.
- The difference when multiplied by 831 to 1,087 motions is a savings of \$7,288-9,533 in Commission staff time in a year.
- Benefit to private and public-sector filers:
  - There is no specific anticipated fiscal savings for motion filers as a result of the rule change. The primary benefit of the rule change for external users is not having to wait for an Order from the Commission to know whether you have an extension of time to respond to a motion and to what future date. For attorneys and parties managing litigation in multiple cases, there is value in the certainty of filing a stipulation for an extension of time. Based on the variety of factors involved, it is not feasible to monetize this benefit.
- g. The proposed amendment to Paragraph (j) (former Paragraph (h)) of Rule 11 NCAC 23A .0609 removes an unnecessary and potentially confusing provision from the rule. The rule as currently written may give parties the impression that they can only request reconsideration if they did not receive actual notice of a motion or file a response, when, in fact, any party in a case who receives an unfavorable ruling on a motion may request that the ruling be reconsidered, modified, or vacated. There is no to little fiscal impact anticipated from this proposed rule change.
- h. The proposed amendment deleting former Paragraph (i) from Rule 11 NCAC 23A .0609 is intended to remove unnecessary and outdated provisions from the rule. Rule 11 NCAC 23A .0609 is about motions practice and former Paragraph (i) is an old provision about non-motion correspondence. The Commission proposes to delete the unnecessary and outdated portions of former Paragraph (i) from Rule 11 NCAC 23A .0609 and move the first sentence of the rule and part of the second sentence of the rule to a new Rule 11 NCAC 23A .0620 that will address non-motion correspondence. The provisions to be deleted are exceptions to the second sentence of the rule which instructs parties not to use written correspondence to introduce new evidence or argue the merits of a case. Following a review of the rule by the Commission, these exception provisions were deemed unnecessary. Their deletion does not take away any rights or allow any new procedures for external users. Therefore, no fiscal impact is anticipated

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<sup>15</sup> Hourly compensation figures based on the average total compensation for the Commission staff involved in handling motions. See Section 1.d.iii. above.

from this change. The movement of the first and second sentence and the creation of a new Rule 11 NCAC 23A .0620 will be analyzed in 2. below.

- i. The proposed amendment to Paragraph (k) (former Paragraph (j)) provides clarifying details regarding the content of the proposed order the rule requires to be submitted with all motions and responses. The intended benefit of the Rule is that less Commission time will be spent editing basic information on proposed orders and sending completed orders to the parties, which will allow the Commission to issue Orders to the parties more quickly.
  - i. Baseline description:

The Commission receives about 16,000 motions a year, including medical motions. Responses are received in approximately two-thirds of cases with motions. Therefore, the Commission receives about 26,667 proposed orders per year subject to this rule. Currently, the rule requires that proposed orders be submitted with all motions and responses filed with the Commission. However, the rule does not prescribe the content of the required proposed order. The majority of proposed orders are submitted by attorneys who are familiar with the customary contents of proposed orders expected at the Commission and in other judicial forums. Most proposed orders received by the Commission already contain the information that will be required by the new rule. However, about 20% of the proposed orders, or 5,333 orders, do not. In particular, there are orders that do not describe the subject of the proposed order, the procedural posture, and/or complete party appearances or contact information, which would be required under the amended rule.
  - ii. Description of the proposed changes:

Under the proposed changes, parties will be required to submit proposed orders that contain all of the information listed in the rule. If the proposed order does not comply with the rule, the Commission may contact the party and require a revised proposed order or may reject the motion or response and require that it be re-filed. The proposed rule change will require that a small additional effort be made in drafting the proposed order in those cases where the order does not comply with the rule.
  - iii. Economic Impact
    - Cost to the State through the Commission: The Commission does not anticipate a cost of any significance to result from this rule change.
    - Cost to State and local government as employers:
      - About half of the proposed orders submitted are filed by employers or carriers. The public-sector portion of 2,667 orders is 11%, or 293 orders.<sup>16</sup>
      - It is estimated that the proposed rule change will require an average of 2 additional minutes to be spent on preparing proposed orders in those cases where incomplete orders are being currently being submitted. It is most likely that this information would be entered by a paralegal. Therefore,

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<sup>16</sup> See note 5.

- using the estimated opportunity cost of \$35.71 per hour for a State employee paralegal time mentioned above, it is estimated that the rule change will cost approximately \$1.20 per motion. For 293 motions, this will amount to \$351.60.
- Cost to private sector filers (including private employers/carriers and employees):
    - About half of the proposed orders submitted are filed by employers or carriers. The private sector portion of 2,667 orders is 89%<sup>17</sup>, or 2374 orders. In addition, the other half of the proposed orders, those filed by employees, also fall under private sector. Therefore, the total number of proposed orders prepared by private sector filers is 5,040.
    - It is estimated that the proposed rule change will require an average of 2 additional minutes to be spent on preparing proposed orders in those cases where incomplete orders are being currently being submitted. It is most likely that this information would be entered by a paralegal. Therefore, using the estimated cost of \$90 per hour for paralegal time mentioned above, it is estimated that the rule change will cost approximately \$3.00 per motion. For 5,040 motions, this will amount to \$15,120.
  - Benefit to the State through the Commission:
    - It is estimated that the proposed rule change will save the Commission an average of 2 additional minutes spent on revising proposed orders in those cases where incomplete orders are being currently being submitted. Depending on the nature of the missing information, it could be entered by a processing assistant or an attorney. Therefore, using the estimated average cost of \$47.70 per hour for Commission assistant (\$24.59) and attorney (\$70.80) time mentioned above, it is estimated that the rule change will save approximately \$1.60 per motion. For 5,333 motions, this will amount to \$8,533.
  - Benefit to external filers:
    - The benefit of the rule for external stakeholders is that they will receive Commission orders more quickly because the Commission will not have to spend as much time revising proposed orders and looking for correct contact information to send the orders to the parties. External stakeholders will not experience a distinct financial benefit from the rule change that can be quantified.

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<sup>17</sup> See note 5.

2. *Adoption of Written Correspondence rule – Rule 11 NCAC 23A .0620*

- a. As discussed in 1.h. above, it is proposed that the first sentence and part of the second sentence of former Paragraph (i) of Rule 11 NCAC 23A .0609 be moved to a new Rule 11 NCAC 23A .0620. The new rule contains a new sentence indicating that the rule applies only to written communications that are not covered by any other rule. The second sentence is one moved from Rule 11 NCAC 23A .0609. This provision requires that written communications sent to the Commission be copied to the opposing party or counsel contemporaneously and by the same method of transmission where possible. The conditional phrase “where possible” was added because if a written communication is uploaded via the Commission’s electronic filing portal, it cannot be transmitted to the opposing party in the same manner. Therefore, some flexibility has been added to the rule. The third sentence was also moved from Rule 11 NCAC 23A .0609. This sentence disallows the use of written communications covered by the rule from being used to introduce new evidence or to make additional arguments. It is not expected that the new Rule 11 NCAC 23A .0620 will impose a fiscal impact of any significance on the Commission or its external stakeholders.

Summary of aggregate impact:

The monetized costs and benefits cited above, in the aggregate, range from \$95,854.00-103,009.00 each year. Costs and benefits will continue indefinitely. Most of the costs related to the proposed rule changes come from relatively small actual and opportunity costs to external stakeholders for additional time required to comply with the amended rule. The bulk of the estimated savings related to the proposed rules comes from time saved by the Commission which will allow it to provide better customer service to external stakeholders.

Benefits related to the rule changes that are not quantified in this analysis due to lack of data or uncertainty include: improved customer service due to time savings for the Commission, more informed decisions by the Commission based on additional information included in motions, more certainty in scheduling for external stakeholders based on extension of time stipulations, and faster receipt of Orders.

It is anticipated that the rule will go into effect on January 1, 2019, and that the same level of cost and benefit will recur each year. A summary of the fiscal impacts is presented in the table below.

**Table 1. Summary of Impacts**

	<b>Annual Impact</b>
<b>COSTS</b>	
<i>State</i>	
Added Drafting and Filing Time Costs	591.00
Added Communication Costs	1,034.00-1,104.00
<i>Private</i>	
Added Drafting and Filing Time Costs	22,800.00
Added Communication Costs	31,080.00-35,920.00
<b>Total Costs</b>	<b>55,505.00-60,415.00</b>
<b>BENEFITS</b>	
<i>State</i>	
Time Saved – Filing or responding to fewer motions	1,428.00
Time Saved – Processing and ruling on fewer motions for extension of time (Commission)	7,288.00-9,533.00
Time Saved – Editing Proposed Orders (Commission)	8,533.00
<i>Private</i>	
Time Saved - Filing or responding to fewer motions	23,100.00
<i>Unquantified Benefits</i>	
More informed decisions	Unquantified
Faster turnaround time	Unquantified
<b>Total Benefits</b>	<b>40,349.00-42,594.00</b>
<b>TOTAL IMPACT</b>	<b>95,854.00-103,009.00</b>
<b>NET COSTS</b>	<b>(15,156.00-17,821.00)</b>



## APPENDIX 1

### Proposed Rule Text

#### 11 NCAC 23A .0609 ~~MOTIONS PRACTICE IN CONTESTED CASES~~

(a) Motions and responses before a Deputy Commissioner:

- (1) in cases that are currently calendared for hearing before a Deputy Commissioner shall be filed in accordance with Rule .0108 of this Subchapter.
- (2) to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be addressed to the Deputy Commissioner who authored the Opinion and Award and filed in accordance with Rule .0108 of this Subchapter.

(b) Motions and responses shall be filed with the Office of the Executive Secretary in accordance with Rule .0108 of this Subchapter:

- (1) when a case is not calendared before a Deputy Commissioner;
- (2) once a case has been continued or removed from a Deputy Commissioner's calendar; or
- (3) after the filing of an Opinion and Award when the time for taking appeal has run.

(c) Motions and responses before the Full Commission:

- (1) in cases calendared for hearing before the Full Commission shall be addressed to the Chair of the Full Commission panel and filed in accordance with Rule .0108 of this Subchapter.
- (2) filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the case shall be addressed to the Chair of the Commission and filed in accordance with Rule .0108 of this Subchapter.
- (3) in cases continued from the Full Commission hearing docket, shall be addressed to the Chair of the panel of Commissioners who ordered the continuance and filed in accordance with Rule .0108 of this Subchapter.
- (4) filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of appeal to the Court of Appeals or the expiration of the period allowed to give notice of appeal to the Court of Appeals shall be addressed to the Commissioner who authored the Opinion and Award and filed in accordance with Rule .0108 of this Subchapter.

(d) Motions requesting an award of attorney's fees from ongoing compensation pursuant to G.S. 97-90 that are not required to be filed with a Deputy Commissioner or the Full Commission pursuant to Paragraphs (a) and (c) of this Rule shall be filed with the Commission's Claims Administration Section in accordance with Rule .0108 of this Subchapter.

~~(d)~~ (e) All motions motions and responses ~~thereto~~ thereto, including requests for extensions of time and requests to withdraw motions, shall include a caption containing the Industrial Commission file number(s), party names, and a title identifying the nature of the motion or response. Motions and responses set forth in the body of electronic mail correspondence or contained in a brief will not be accepted for filing by the Commission. This Paragraph does not apply to parties without legal representation.

~~(e)~~ (f) A motion shall state with particularity the grounds on which it is based, the relief sought, and the opposing party's ~~position, if known,~~ position or that there has been a reasonable attempt to contact the opposing party and ascertain its position. Service shall be made on all opposing attorneys of record, or on all opposing parties if not represented.

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

(h) Oral motions shall be followed with a written motion from the moving party, if requested by a hearing officer.

~~(g)~~ (i) The responding party to a motion shall have 10 days after a motion is served during which to file and serve copies of a response in opposition to the motion. The Commission may shorten or extend the time for responding to any motion in the interests of justice or to promote judicial economy. Parties in agreement may submit a written stipulation to a single extension of time for responding to any motion, except for medical motions pursuant to Rule .0609A of this Section. The parties submitting a stipulation shall agree to an extension of a reasonable time, not to exceed 30 days.

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

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

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

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

- (1) the IC File Number;

- (2) the case caption;
- (3) the subject of the proposed Order;
- (4) the procedural posture; and
- (5) the party appearances or contact information. If a party is represented by counsel, then the appearance should include the attorney and firm name, email address, telephone number, and fax number. If a party is unrepresented, then the proposed Order should include the party's email address, telephone number, and fax number, if available.

*History Note:* Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91;  
Eff. January 1, 1990;  
Amended Eff. \*\*\*\*\*, \*\*, \*\*\*\*\*; February 1, 2016; November 1, 2014; June 1, 2000; March 15, 1995;  
Recodified from 04 NCAC 10A .0609 Eff. June 1, 2018.

**11 NCAC 23A .0620 WRITTEN COMMUNICATIONS WITH THE COMMISSION**

- (a) This Rule applies to written communications relative to a case before the Commission that are not governed by statute or another Rule in this Subchapter.
- (b) Written communications sent to the Commission shall be contemporaneously sent by the same method of transmission, where possible, to the opposing party or, if represented, to opposing counsel.
- (c) Written communications, whether addressed directly to the Commission or copied to the Commission, may not be used as an opportunity to introduce new evidence or to argue the merits of the case.

*History Note:* Authority G.S. 97-80(a);  
Eff. \*\*\*\*\*, \*\*, \*\*\*\*\*