

**Regulatory Impact Analysis
Codification of Contact Information Requirements and Additional Rule
Amendments**

Basic Information

Agency: North Carolina Industrial Commission

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Rules Proposed for Adoption: Rule 11 NCAC 23A .0801
Waiver of Rules
(See proposed rule text in Appendix 1)

Rule 11 NCAC 23A .0109
Contact Information
(See proposed rule text in Appendix 1)

Statutory Authority: G.S. §§ 97-80; 97-80(a)

Impact Summary

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

RULE 11 NCAC 23A .0801

The amendments proposed to Rule 11 NCAC 23A .0801 allow oral waivers during hearings before the Commission. Currently, waivers may only be submitted in writing. The proposed amendments allow for more flexibility to request waivers during hearings, but the proposed amendments also allow the Commission to order written requests be submitted to the Commission following any oral waiver request.

The fiscal impact from the proposed amendments is expected to be *de minimis*. The proposed amendments will result in fewer waiver requests being submitted in writing, which will be a savings to the Commission due to decreased time reviewing written filings, as well as a savings to the State, local governments, and private sector due to decreased time needed to draft written waiver requests. However, oral requests may only be made during hearings. For reference, the Full Commission heard 393 appeals and the Deputy Commissioners section heard 1,728 cases in FY 2016-2017.¹ The Commission cannot determine how many oral requests may be made since all requests must currently be in writing. Since the Commission may require parties to submit written requests following any oral request, the number of purely oral waiver requests is expected to be minimal.

Due to the proposed change, it is also possible the Commission will receive an increased number of waiver requests if more parties decide to make oral waiver requests at hearings. Again, since this will be new, the Commission does not have data sufficient to determine the expected increase.

RULE 11 NCAC 23A .0109

Description of the Proposed Rule

Rule 11 NCAC 23A .0109 provides detailed instructions for participants in the workers' compensation system to provide the Industrial Commission with current contact information. The rule sets out different methods for filing updated contact information based on the identity of the person or entity. While there is variation between how different entities provide the information to the Commission, the information required is consistent system-wide. This rule places the burden on attorneys and unrepresented parties to keep the Commission apprised of any change in contact information, including telephone number, facsimile number, email address, and mailing address.

Necessity for the Proposed Rule

The North Carolina Industrial Commission is a quasi-judicial agency tasked with administering and adjudicating claims arising under the Workers' Compensation Act. In that capacity, the Commission functions as a court system, hearing cases and issuing orders and decisions. In its role as an adjudicatory body, there are situations and circumstances when the Commission needs to contact or communicate with parties in pending matters. In order to efficiently and effectively reach parties, the Commission needs to have on hand the most current addresses by which to reach that person, party, or entity. Adopting this rule will ensure that the

¹ Industrial Commission Annual Report, <http://www.ic.nc.gov/2017AnnualReport.pdf>

Commission is able to swiftly and effectively contact parties when necessary and appropriate.

Introduction and Background:

The North Carolina Industrial Commission is a statutory creation of the General Assembly tasked with administering the Workers' Compensation Act and adjudicating all cases arising thereunder. Pursuant to N.C. Gen. Stat. § 97-80, the Commission is required to adopt rules to carry out the provisions of the Act. These rules should establish processes and procedures as necessary. In complying with this statutory requirement, the Commission evaluates process improvements for the workers' compensation system.

The current rules of the Industrial Commission give no specific directions requiring persons or entities with active matters before the Commission to provide notice of any change to their contact information. It is important for the Commission to be kept apprised of current contact information for unrepresented employees, attorneys of record, and non-insured employers who are not represented by counsel in order to notify those persons or entities of hearings as well as filings of orders and opinions and awards. For purposes of this rule, contact information includes telephone number, facsimile number, email address and mailing address.

With no rule in place to govern updating contact information, the Commission also experiences inefficiencies internally. If contact information is outdated, Commission staff must spend additional time locating the updated contact information. If the person or entity does provide the Commission with their updated contact information, the lack of a specified contact via rule means staff must expend additional time ensuring the contact information is sent to and recorded by the appropriate staff member.

To improve efficiency, the Commission intends to require attorneys and unrepresented parties to keep the Commission informed of any changes to their contact information. Additionally, the proposed rule adoption sets forth specific instructions for how to notify the Commission of such an update. This ensures the updated contact information is directed to the appropriate staff member.

Impact of the Proposed New Rule:

Adoption of comprehensive contact information rule – Rule 11 NCAC 23A .0109

This rule mandates and describes the requirement for all attorneys or unrepresented parties to notify the Commission of all changes to their contact information. The term “contact information” includes telephone number,

facsimile number, email address, and mailing address. Please note this rule allows persons or entities without legal representation to provide their updated contact information via a variety of different methods to ensure they are able to comply with the rule.

a. Description of baseline situation:

The lack of clear and comprehensive directions regarding how to update contact information and the method for updating the information resulted in additional time and resources spent by the filers trying to determine how and where to update their contact information. Additionally, staff spent additional time and resources answering related phone calls, rerouting documents, tracking down documents, and tracking down updated contact information. Further, some hearings have been delayed or cancelled to due to the Commission's inability to contact individuals and provide notice of upcoming hearings.

1. Attorneys of record baseline:

Although not required by rule, attorneys of record generally know to keep the Commission apprised of any changes in their contact information. Currently, attorneys of record have been instructed to direct their contact via email to dockets@ic.nc.gov. However, some attorneys contact staff via phone or do not provide updated information. Once the updated contact information is provided or forwarded to dockets@ic.nc.gov, the Clerk's Office staff logs and updates the attorney's contact information on the master spreadsheet currently used to maintain this information.

2. Employees not represented by counsel baseline:

Employees not represented by counsel are not currently required by rule to notify the Commission of changes to their contact information. However, in practice, some employees do notify the Commission of changes to their contact information. Any such updates are logged and updated by Claims Administration Section staff. The Commission has promulgated a number of forms that are used for various purposes in a workers' compensation claim. Each form requests contact information from the parties. It is through these forms that the Commission currently collects contact information. This is not efficient as Commission staff must review all filings to determine which is the most recent. There is significant risk as well because there is no guarantee that the address provided on the last filing is accurate.

3. Non-insured employers not represented by counsel baseline:

Non-insured employers not represented by counsel are not currently required by rule to notify the Commission of changes to their contact information. If a non-insured employer does notify the Commission of a change, Clerk's Office staff logs and updates the contact information. The Commission has promulgated a number of forms that are used for various purposes in a workers' compensation claim. Each form requests contact information from the parties. It is through these forms that the Commission currently collects contact information. This is not efficient as Commission staff must review all filings to determine which is the most recent. There is significant risk as well because there is no guarantee that the address provided on the last filing is accurate.

b. Description of proposed changes:

The proposed Rule 11 NCAC 23A .0109 will require all attorneys or unrepresented parties to inform the Commission of any changes to their contact information. Contact information includes telephone number, facsimile number, email address, and mailing address. The proposed rule provides instructions for how to submit contact information updates. Attorneys, unrepresented employees, and unrepresented non-insured employers each have specific instructions for how to notify the Commission of their updated contact information to ensure the information is directed to the correct Commission staff and to ensure that compliance with the rule will be easily accomplished for all individuals who must submit contact information.

c. Economic impact:

(1) Costs to the State through the Commission:

- Opportunity Costs of Current Employees:
 - Opportunity cost of an Administrative Assistant I in the Clerk's Office logging and updating the contact information submissions from attorneys of record and non-insured employers. It takes the Administrative Assistant 5 minutes to log and update contact information in Rumba and Rightfax for an attorney of record. It is estimated it will take the same amount of time to update the contact information for a represented employee or non-insured employer. Based on Administrative Assistant salary of \$39,367, compensation including benefits equates to \$60,403.27, meaning an hourly rate of \$29.04. Thus, the cost of

logging and updating the contact information for one individual or entity is \$2.42. This estimate assumes employees work 2,080 hours per year.

- The Administrative Assistant in the Clerk's Office currently logs updated contact information for attorneys of record, though submission is not required by rule. The Commission receives between 240 and 300 such requests annually. Based on current submissions, the cost to log the information is between \$580.80 and \$726.00 per year. The Commission conservatively estimates 95% of attorneys of record currently update their contact information, meaning submissions could increase to between 253 and 316 per year, increasing opportunity costs to between \$611.37 and \$764.21 per year. Therefore, the proposed rule amendments are projected to increase opportunity costs by \$30.57 and \$38.21 per year.
- Opportunity cost of an Administrative Assistant I in the Commission's Claims Administration section to log and update the contact information submissions from employees not represented by counsel. The Commission occasionally receives such submissions now, and it takes 2 minutes to update an unrepresented employee's information in CCMS. Based on Administrative Assistant salary of \$39,373, compensation including benefits equates to \$60,411.60, meaning an hourly rate of \$29.04. Thus, the cost of logging and updating the contact information for one individual or entity is \$0.97. This estimate assumes employees work 2,080 hours per year. The Commission cannot estimate how many submissions it will receive.
- IT costs:
The email account dockets@ic.nc.gov costs \$6.25 per month. This account already exists and therefore no additional expenditure will be necessary.

(2) Costs to the State as an employer:

- State employees such as attorneys and paralegals representing the State will file updated contact information via email pursuant to this rule. Similarly, attorneys or paralegals representing local government units will file updated contact information via the same method. Local government is included in the public sector cost analysis in this section.
- Costs associated with email filing of updated contact information: Attorneys of record, including attorneys employed by the State or local government units must update their contact information by submitting

any updates via email. Currently, attorneys submit changes to their contact information to dockets@ic.nc.gov, though not required by rule. As explained above, the Commission expects to receive between 253 and 316 contact information updates per year from attorneys of record. Assuming the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 11% of filings are from attorneys employed by State or local government units.² Based on a test of submitting contact information via email, it is estimated it will take attorneys 3 minutes to file a contact information update.³ It is assumed paralegals or legal assistants will compose and send these emails. Based on an hourly total compensation rate of \$35.71,⁴ the annual cost to filers will be between \$82.82 and \$103.44.

- Another potential cost to State or local governments would arise in situations where the party fails to comply with this rule and does not provide the Commission with updated contact information. The Commission would then send documents or transmit communications to the wrong address. This would have unintended costs to the public sector, such as not receiving notice of a hearing, missing a filing deadline, or missing the filing of an Order or Opinion and Award. These consequences could impose unquantifiable qualitative costs.

(3) Costs to private sector filers:

- A cost to the private sector would arise in situations where a party fails to comply with this rule and does not provide the Commission with updated contact information. The Commission would then send documents or transmit communications to the wrong address. This would have unintended costs to the private sector, such as not receiving notice of a hearing, missing a filing deadline, or missing the filing of an Order or Opinion and Award. This may result in added time and costs to resolve the hearing and an increased risk of cases being continued. These consequences could impose unquantifiable qualitative costs.
- There are potential costs to the private sector associated with the additional time required to update contact information. Attorneys or

² 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>

³ For the test, an attorney at the Commission simulated looking up the correct email address for submitting updated contact information. The attorney then typed and submitted 3 test emails including their name, telephone number, facsimile number, email address, and mailing address. The tests averaged 2 minutes and 43 seconds. To account for individuals who may need more time, the number was rounded up to 3 minutes.

⁴ 2017 wage estimates for paralegals and legal assistants in North Carolina reported by NC Department of Commerce, Occupational Employment and Wages in North Carolina (OES).

paralegals employed by the private sector will spend time updating their own contact information. Additionally, employees not represented by counsel and non-insured employers not represented by counsel will be required to update their contact information.

- As explained above, the Commission expects to receive between 253 and 316 contact information updates per year from attorneys of record. 89% of those attorneys are employed by the private sector.⁵ As explained above, it is estimated it will take attorneys 3 minutes to file a contact information update via email. If it is assumed the legal or administrative assistants doing the filing are paid an hourly total compensation rate of \$34.50,⁶ the cost of filing updated contact information for attorneys of record will be between \$388.42 and \$485.14 per year.
- Unrepresented employees and non-insured employers will be required to file their updated contact information with the Commission via EDFP, email, facsimile, U.S. Mail, private courier service, or hand delivery. The Commission does not currently always receive this information and therefore cannot estimate how many filings will be received or which method of filing the unrepresented parties will use, though it is believed most will file using email or EDFP, making the cost minimal.

(4) Benefits to the State through the Commission:

- The proposed rule changes will greatly improve the efficiency of the Commission. Commission staff will spend less time searching for updated contact information when attempting to contact persons or entities with matters pending before the Commission in order to schedule hearings and file orders or Opinions and Awards. This includes reduced time on telephone calls and emails.
- Having all updated contact information on hand should result in a decreased number of continued hearings at the Full Commission Level. Some hearings are continued due to parties not receiving adequate notice of the hearing because their contact information changed and

⁵ Supra note 1.

⁶ 2017 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 Bureau of Labor Statistics. Employer Costs per Hour Worked for Employee Compensation and Costs as a Percentage of Total Compensation: Private industry workers. March 2018 (Release Date June 8 2018).

<https://www.bls.gov/news.release/ecec.t05.htm>

Adjusted for private sector wage growth estimate of 2.74% for North Carolina professional and business service sectors. Reported by IHS Connect. Regional Economics Database. North Carolina Annual Forecast Data. Accessed June 13, 2018.

the Commission was not notified. With updated contact information, notices of hearings will go to the correct person from the beginning. Per unit at the Full Commission level, the cost of continuing a hearing includes approximately 30 minutes for an Agency Legal Consultant with an average compensation of \$47.73 per hour⁷ to calendar the hearing, send notice to the parties, draft an order, and file the order. A Commissioner compensated at an average of \$88.50⁸ per hour spends approximately 5 minutes reviewing and signing the order. Combined, the total cost at the Full Commission level to continue a hearing amounts to \$31.25.

- Having all updated contact information on hand should result in a decreased number of continued hearings at the Deputy Commissioner level. Some hearings are continued due to parties not receiving adequate notice of the hearing because their contact information changed and the Commission was not notified. With updated contact information, notices of hearings will go to the correct person from the beginning. Per unit at the Deputy Commissioner level, the cost of continuing a hearing includes approximately 15 minutes for an Administrative Assistant with an average compensation of \$35.71⁹ per hour to review and file a continuance order. A Deputy Commissioner compensated at an average of \$70.52¹⁰ per hour spends approximately 30 minutes drafting the order. Combined, the total cost at the Deputy Commissioner level to continue a hearing amounts to \$44.19.
- Additionally, if a continuance order is filed at either the Full Commission or Deputy Commissioner level and a party is unrepresented by legal counsel, the party will be served via U.S. Mail. The cost of sending one letter not exceeding 1 oz. via U.S. Mail is \$0.47 plus 10% for Mail Service Center rates, totaling \$0.52 per continuance involving an unrepresented party.
- In the future, the Commission plans to use the updated contact information gathered according to this rule to increase efficiency by serving more orders and opinions via email, where possible, saving at least \$0.52 per mailing. The Commission currently serves represented

⁷ The Commission generally has 6 full-time permanent Agency Legal Consultants that serve as law clerks to the Commissioners. Currently, the Commission has 3 full-time permanent Agency Legal Consultants/law clerks. Their average annual compensation including benefits is \$99,278.40. Therefore, their average hourly compensation is \$47.73.

⁸ The Commission has 6 Commissioners whose salary is set by statute. The Chairman's annual compensation including benefits is \$185,824.36. The annual compensation for all other Commissioners is \$183,742.06. Therefore, the average annual compensation for a Commissioner is \$184,089.11, making a Commissioner's average hourly compensation \$88.50.

⁹ *Supra* note 4.

¹⁰ Deputy Commissioners' salaries are set by statute. See G.S. §§ 97-78(b2), (b3). The average annual compensation for a Deputy Commissioner, including benefits, is \$146,680.22. Therefore, the average Deputy Commissioner's hourly compensation is \$70.52.

parties via email when the Commission has record of the attorney of record's email address. However, the Commission does not have email addresses for all attorneys nor does it have email addresses for unrepresented parties.

(5) Benefits to the public and private sector:

- The proposed changes will result in improved information and clear direction regarding how to update contact information.
- Users' customer service experience will improve due to Commission staff's ability to serve documents and schedule hearings more efficiently.

Alternatives Analysis

Alternatives to the proposed rule changes include maintaining the status quo or adopting rules that require one-time filing of contact information with no requirement to provide updated information upon a change to the initial contact information.

If the Commission were to forgo adopting rules and instead requested the information be provided voluntarily, the Commission would not capture the cost savings estimated for reducing the time spent ascertaining the correct contact address. Without a mandate for this information to be provided to the Commission in the manner prescribed by the proposed rule, the Commission would achieve less savings in the future by not being able to serve as many orders and Opinions and Awards via email. If persons and entities are not required to submit this information, but are encouraged to do so voluntarily, the Commission would continue to have outdated contact information in some cases, leading to continuances and unnecessary use of Commission time and resources.

If the Commission were to adopt rules that required persons or entities with active matters pending before the Commission to submit contact information at a single point in the case, but did not add an additional requirement that he or she update that information upon any change, some benefits would be realized in terms of the Commission having some contact information on file which may still be correct. However, unless there is a continuing obligation for the party to notify the Commission with updated information, the Commission would not capture the benefit of certainty in transmission. Additionally, the Commission would capture some, but not all, of the benefits of reduced time spent trying to reach a party because there will be some returned or rejected mailings, emails, or other attempts to contact a party.

Any reductions in potential time and resource savings based on alternative, less stringent rules will result in less improvement in customer service, slower turnaround times for communications sent by the Commission, and increased risk in communications or materials being sent to an incorrect number or address. The baseline rule used for the fiscal impact analysis is continuing with no rule on point. Under the current situation, the Commission is not consistently collecting this information from all persons or entities.

Table 1. Summary of Costs and Benefits

	Impact
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COSTS	
<i>State</i>	
Logging Information – Attorney	\$30.57-\$38.21/year
Logging Information – Employee not represented by counsel	\$0.97/unit
Attorneys submitting information via email	\$82.82-\$103.44/year
<i>Private</i>	
Attorneys submitting information via email	\$388.42-\$485.14/year
<i>Unquantified</i>	
Time for unrepresented employees and non-insured employers to file information	
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Total Costs	
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<u>BENEFITS</u>	
<i>State</i>	
Continuing a hearing – Full Commission	\$31.25/unit
Continuing a hearing – Deputy Commissioner	\$44.19/unit
Decreased mail costs	\$0.52/unit
<i>Private</i>	
<i>Unquantified</i>	
Reduction in communications sent to wrong address	
Increased efficiency	
Improved customer service	

Appendix 1

11 NCAC 23A .0801 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 request~~ of a party or upon its own initiative only if the employee is not represented by counsel. Notwithstanding oral requests made during a hearing before the Commission, all requests shall be submitted in writing and served upon all opposing parties contemporaneously. By order of the Commission, oral requests shall be submitted in writing within 5 days of the request. Responses to requests considered pursuant to this rule may be submitted in accordance with Rule .0609 of this Subchapter within 5 days of service of the original request. Citation to this Rule or use of the term “waiver” is not required for requests considered pursuant to this Rule. 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. 97-80(a);
Eff. January 1, 1990;
Amended Eff. November 1, 2014.*

Rule 11 NCAC 23A .0109 is proposed for adoption as follows:

11 NCAC 23A .0109 CONTACT INFORMATION

(a) "Contact information" for purposes of this Rule shall include telephone number, facsimile number, email address, and mailing address.

(b) All attorneys of record with matters before the Commission shall inform the Commission in writing of any change in the attorney's contact information via email to doctors@ic.nc.gov.

(c) All unrepresented persons or entities with matters pending before the Commission shall advise the Commission upon any change to their contact information in the following manner:

(1) All employees who are not represented by counsel shall inform the Commission of any change in contact information by filing a written notice via the Commission's Electronic Document Filing Portal ("EDFP"), electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(2) All non-insured employers that are not represented by counsel shall inform the Commission of any change in contact information by filing a written notice via the Commission's Electronic Document Filing Portal ("EDFP"), electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

History Note: Authority G.S. 97-80;

Eff. _____