

**Regulatory Impact Analysis
Codification of Contact Information Requirements**

Basic Information

Agency: North Carolina Industrial Commission

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Rules Proposed for Adoption: Rule 11 NCAC 23B .0105
Contact Information
(See proposed rule text in Appendix 1)

Statutory Authority: G.S. §§ 143-291; 143-300.

Impact Summary

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

Description of the Proposed Rule

Rule 11 NCAC 23B .0105 provides instructions 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 any person, party, or entity with an active matter pending before the Commission 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 State Tort Claims 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 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 determining claims brought pursuant to the State Tort Claims Act. Pursuant to N.C. Gen. Stat. § 143-300, the Commission is authorized 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 in order to notify persons or entities of hearings as well as filings of orders and decisions and orders. 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 persons or entities with matters before the Commission 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 23B .0105

This rule mandates and describes the requirement for all persons or entities with active matters pending before the Commission 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. Persons or entities without legal representation baseline:

Persons or entities not represented by counsel are not currently required by rule to notify the Commission of changes to their contact information. However, any such updates are logged and updated by Clerk’s Office staff. The Commission has promulgated a number of forms that are used for various purposes in a tort 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.

2. Plaintiffs without legal representation who were inmates at the time of filing their tort claim:

Persons who were inmates at the time of filing their claim are not currently required by rule to notify the Commission of changes to their contact information. However, any such updates are logged and updated by Clerk’s Office staff. The Commission has promulgated a

number of forms that are used for various purposes in a tort claim. Each form requests contact information from the parties. It is through these forms that the Commission currently collects contact information. Additionally, the Clerk's office looks up the individual's OPUS number through DPS to ensure their mailing address has not changed. This is not efficient because the Clerk's Office has to look through filings and search the OPUS database to determine their most recent contact information.

3. 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.

b. Description of proposed changes:

The proposed Rule 11 NCAC 23B .0105 will require all persons or entities with active matters pending before the Commission 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 and unrepresented parties 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 Associate II in the Clerk's Office to log and update the contact information submissions from unrepresented persons or entities, including those with claims filed while they were inmates. Based on Administrative Associate II salary of \$28,913, compensation including benefits

equates to \$45,891.03, meaning an hourly rate of \$22.49. This estimate assumes employees work 2,040 hours per year. It takes an estimated 8 minutes to update the contact information in one tort claim for an unrepresented party. Thus, the cost of logging and updating the contact information for one individual or entity is \$3.00. The Commission cannot estimate how many submissions it will receive. However, 587 tort claims are filed each year.¹ Assuming all tort claims are filed by unrepresented parties and assuming all parties update their contact information once, it would cost \$1,761.00 per year. The cost is estimated to be lower because some parties are represented and not every party will need to update their contact information.

- Opportunity cost of an Administrative Assistant I in the Clerk's Office logging and updating the contact information submissions from attorneys of record. It takes the Administrative Assistant 5 minutes to log and update contact information in Rumba and Rightfax for an attorney of record. Based on Administrative Assistant salary of \$39,367, compensation including benefits equates to \$60,403.27, meaning an hourly rate of \$29.60. Thus, the cost of logging and updating the contact information for one individual or entity is \$2.46. This estimate assumes employees work 2,040 hours per year.
- Approximately 29% of plaintiffs in State Tort Claim filings are non-inmates.² Generally, inmate claims tend to not have legal representation while non-inmate claims generally have legal representation. Assuming attorneys updated their contact information for every non-inmate claim, the Commission would receive 170 contact information updates,³ totaling \$418.20 per year.
- 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 as necessary via email.
- Costs associated with email filing of updated contact information: Attorneys of record, including attorneys employed by the State, must update their contact information by submitting any updates via email.

¹ Industrial Commission Annual Report FY 2016-2017, <http://www.ic.nc.gov/2017AnnualReport.pdf>.

² In FY 2017-2018, the Commission received 678 tort claims: 481 were by inmates (71%) and 197 by non-inmates (29%).

³ Based on 587 tort claims filed in FY 2016-2017. See *supra* note 1.

Currently, attorneys submit changes to their contact information to dockets@ic.nc.gov, though not required by rule. Based on the above estimated 170 contact information updates per year from attorneys of record, and 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 government-employed attorneys.⁴ 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.⁵ It is assumed paralegals or legal assistants will compose and send these emails. Based on an hourly total compensation rate of \$35.71,⁶ the annual cost to filers will be between approximately \$33.92.

- Another potential cost to State government 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 Decision and Order. 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 Decision and Order. This may result in added filing 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. Attorney or paralegals employed by the private sector will spend time updating their own contact information or the contact information of their clients.

⁴ 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>

⁵ 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.

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).

- As explained above, the Commission expects to receive up to 170 contact information updates per year from attorneys of record. 89% of those attorneys are employed by the private sector.⁷ 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 \$34.50,⁸ the cost of filing updated contact information for attorneys of record will be approximately \$260.47.
- Unrepresented persons or entities, including inmates post-release, 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 Decisions and Orders. 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 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 hour⁹ to

⁷ Supra note 1.

⁸ 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.

⁹ 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.

calendar the hearing, send notice to the parties, draft an order, and file the order. A Commissioner compensated at an average of \$88.50¹⁰ 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 \$35.71¹¹ per hour to review and file a continuance order. A Deputy Commissioner compensated at an average of \$70.52¹² 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.
- In some instances, tort claims filed by an inmate in the North Carolina Division of Adult Correction may be heard by a Special Deputy Commissioner. Per unit at the Deputy Commissioner level, the cost of continuing a hearing assigned to a Special Deputy Commissioner includes approximately 15 minutes for an Administrative Assistant with an average compensation of \$35.71¹³ per hour to review and file a continuance order. A Special Deputy Commissioner compensated at an average of \$45.63¹⁴ per hour spends approximately 30 minutes drafting the order. Combined, the total cost at the Deputy Commissioner level to continue a hearing amounts to \$31.75.
- 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.

(5) Benefits to the public and private sector:

¹⁰ 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.

¹¹ Supra note 4.

¹² 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.

¹³ Supra note 4.

¹⁴ The average annual compensation for a Special Deputy Commissioner, including benefits, is \$93,092.60. Therefore, the average Special Deputy Commissioner's hourly compensation is \$45.63.

- 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.

Table 1. Summary of Costs and Benefits

	Impact
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COSTS	
<i>State</i>	
Logging Information – Unrepresented	\$1,761.00/year
Logging Information – Attorney of Record	\$418.20/year
Submitting Updated Information	\$33.92/year
<i>Private</i>	
Attorneys submitting information	\$260.47/year
<i>Unquantified</i>	
Time for unrepresented parties to file information	
Total Costs	\$2,212.92/year
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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
Continuing a hearing – Special Deputy Commissioner	\$31.75/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

Rule 11 NCAC 23B .0105 is proposed for adoption as follows:

11 NCAC 23B .0105 CONTACT INFORMATION

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

(b) All persons or entities without legal representation with matters pending before the Commission shall advise the Commission upon 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.

(c) Any plaintiff without legal representation who was an inmate in the North Carolina Division of Adult Corrections at the time of filing his or her tort claim, shall, within thirty (30) days of release, provide the Commission with written notice of his or her post-release contact information in any manner authorized in Paragraph (b) of this Rule. Following the initial written notice of post-release contact information, the previously incarcerated plaintiff shall continue to advise the Commission upon any change in contact information in accordance with Paragraph (b) of this Rule.

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

History Note: Authority G.S. §§ 143-291; 143-300.

Eff. _____