

11 NCAC 23A .0605 DISCOVERY

In addition to depositions provided for in G.S. 97-80, parties may obtain discovery by the use of interrogatories and requests for production of documents as follows:

- (1) Any party may serve upon any other parties written interrogatories, up to 30 in number, including subparts thereof, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available from the party interrogated.
- (2) Interrogatories may, without leave of the Commission, be served upon any party after the filing of a Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent*, Form 18B *Claim by Employee, Representative, or Dependent for Benefits for Lung Disease*, or Form 33 *Request that Claim be Assigned for Hearing*, or after the acceptance of liability for a claim by the employer.
- (3) Each interrogatory shall be answered separately and in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them and the objections shall be signed by the party making them. The party on whom the interrogatories have been served shall serve a copy of the answers and objections, if any, within 30 days after service of the interrogatories. The parties may stipulate to an extension of time to respond to the interrogatories. A motion to extend the time to respond shall state that an attempt to reach agreement with the opposing party to informally extend the time for response has been unsuccessful and the opposing party's position or that there has been an attempt to contact the opposing party to ascertain its position.
- (4) If there is an objection to or other failure to answer an interrogatory, the party submitting the interrogatories may move the Commission for an order compelling answer.
- (5) Interrogatories and requests for production of documents shall relate to matters that are not privileged, that are relevant to an issue in dispute, or that the requesting party reasonably believes may later be disputed. The signature of a party or attorney serving interrogatories or requests for production of documents constitutes a certificate by such person that he or she has personally read each of the interrogatories and requests for production of documents, that no such interrogatory or request for production of documents will oppress a party or cause any unnecessary expense or delay, that the information requested is not known or equally available to the requesting party, and that the interrogatory or requested document relates to an issue presently in dispute or that the requesting party reasonably believes may later be in dispute. A party may serve an interrogatory, however, to obtain verification of facts relevant to an issue presently in dispute. Answers to interrogatories may be used to the extent permitted by Chapter 8C of the North Carolina General Statutes.
- (6) The parties may serve requests for production of documents without leave of the Commission until 35 days prior to the date of hearing.
- (7) Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may be used only upon motion and approval by the Commission or by agreement of the parties. The Commission may approve the motion if it is shown to be in the interests of justice or to promote judicial economy.
- (8) Discovery requests and responses, including interrogatories and requests for production of documents, shall not be filed with the Commission, except for the following:
 - (a) notices of depositions;
 - (b) discovery requests and responses deemed by filing party to be pertinent to a pending motion;
 - (c) responses to discovery following a motion or order to compel; and
 - (d) post-hearing discovery requests and responses.The above-listed documents shall be filed with the Commission, as well as served on the opposing party.
- (9) Sanctions shall be imposed under this Rule for failure to comply with a Commission order compelling discovery unless the Commission excuses the failure based on an inability to comply with the order. A motion by a party or its attorney to compel discovery under this Rule and Rule .0607 of this Subchapter shall represent that informal means of resolving the discovery dispute have been attempted in good faith and state the opposing party's position or that there has been a reasonable attempt to contact the opposing party and ascertain its position.

History Note: Authority G.S. 97-80(a); 97-80(f); S.L. 2014-77;
Eff. January 1, 1990;
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