

**SUBCHAPTER 23H – RULES OF THE INDUSTRIAL COMMISSION RELATING TO THE PUBLIC
SAFETY EMPLOYEES' DEATH BENEFITS ACT**

SECTION .0100 – ADMINISTRATION

11 NCAC 23H .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS

For purposes of this Subsection, the offices of the North Carolina Industrial Commission are located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not being filed electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

*History Note: Authority G.S. 143-166.4;
Eff. November 1, 1977;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10H .0101 Eff. June 1, 2018.*

SECTION .0200 - RULES OF COMMISSION

11 NCAC 23H .0201 DETERMINATION OF CLAIMS BY THE COMMISSION

(a) Upon application for an award under the provisions of the Public Safety Employees' Death Benefits Act, the Commission shall determine whether sufficient evidence is contained in the Commission's workers' compensation or other files upon which to base an order for the payment of benefits. If the Commission is satisfied that such an order should be issued, it shall, without conducting a hearing, file an award directing the payment of benefits.

(b) If the Commission is of the opinion that the Commission's workers' compensation or other files have insufficient evidence upon which to base an award for the payment of benefits, the Commission shall place the case upon the Commission's hearing docket. The Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the Commission.

*History Note: Authority G.S. 143-166.4;
Eff. August 1, 1979;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10H .0201 Eff. June 1, 2018;
Amended Eff. January 1, 2019.*

11 NCAC 23H .0202 HEARINGS BEFORE THE COMMISSION

(a) The Commissioner or Deputy Commissioner before whom a case regarding the Public Safety Employees' Death Benefits Act is set for hearing, shall order the parties to participate in a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate in consideration of the interests of justice and judicial economy, including conference telephone calls.

(b) The Commission shall give notice of hearing in every case. Postponement or continuance of a scheduled hearing shall be granted in the interests of justice or to promote judicial economy.

(c) Notice of the hearing shall be given to the Attorney General of the State of North Carolina, who may appear as amicus curiae.

*History Note: Authority G.S. 143-166.4;
Eff. August 1, 1979;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10H .0202 Eff. June 1, 2018;
Amended Eff. January 1, 2019.*

11 NCAC 23H .0203 APPOINTMENT OF GUARDIAN AD LITEM

(a) Infants or incompetents may bring an action under this Subchapter only through their guardian *ad litem*. The Commission shall appoint a person as guardian *ad litem* if the Commission determines it to be in the best interest of the infant or incompetent. The Commission shall appoint a guardian *ad litem* only after due inquiry as to the fitness of the person to be appointed.

(b) No compensation due or owed to the infant or incompetent shall be paid directly to the guardian *ad litem*.

(c) The Commission may assess a fee to be paid to an attorney who serves as a guardian *ad litem* for actual services rendered upon receipt of an affidavit of actual time spent in representation of the infant or incompetent.

History Note: Authority G.S. 143-166.4;
Eff. August 1, 1979;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10H .0203 Eff. June 1, 2018.

11 NCAC 23H .0204 WRITTEN OR RECORDED STATEMENT

(a) Upon the request of the employer or his agent to take a written or a recorded statement in an action pursuant to Article 12A of Chapter 143 of the General Statutes, the employer or his agent shall advise any person eligible for payments that the statement may be used to determine whether the claim will be paid or denied. Any person eligible for payments who gives the employer, its carrier, or any agent either a written or recorded statement of the facts and circumstances surrounding the decedent's injury shall be furnished a copy of such statement within 45 days after request. Any person eligible for payments shall immediately be furnished with a copy of the written or recorded statement following a denial of the claim. A copy shall be furnished at the expense of the party to whom the statement was given.

(b) If any party fails to comply with this Rule, a Commissioner or Deputy Commissioner shall enter an order prohibiting that party from introducing the statement into evidence or using any part of the statement.

History Note: Authority G.S. 143-166.4;
Eff. August 1, 1979;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10H .0204 Eff. June 1, 2018.

11 NCAC 23H .0205 REVIEW BY THE FULL COMMISSION

(a) A party may request a review of an award filed by a Deputy Commissioner in an action pursuant to Article 12A of Chapter 143 of the General Statutes by filing a letter expressing a request for review to the Full Commission within 15 days of receipt of the award. The award is binding on the parties if not appealed.

(b) After receipt of notice of review, the Commission shall supply to the appellant and to the appellee a transcript of the record upon which the award is based and from which a review is being taken to the Full Commission. The appellant shall, within ten days of receipt of transcript of the record, file with the Commission a written statement of the particular grounds for the appeal, with service on all opposing parties.

(c) Grounds for review not set forth are deemed to be abandoned and argument thereon shall not be heard before the Full Commission.

(d) When a review is made to the Full Commission, the appellant's brief, if any, in support of his ground for appeal shall be filed with the Commission, with service on all opposing parties no less than 15 days prior to the hearing on review. The appellee shall have five days in which to file a reply brief, if deemed necessary, with the Commission, with service on all opposing parties.

(e) Any motions by either party shall be filed with the Full Commission, with service on all opposing parties.

(f) Upon the request of a party, or its own motion, the Commission may waive oral arguments in the interests of justice or to promote judicial economy. In the event of such waiver, the Full Commission shall file an award based on the record and briefs.

History Note: Authority G.S. 143-166.4;
Eff. August 1, 1979;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10H .0205 Eff. June 1, 2018.

11 NCAC 23H .0206 WAIVER OF RULES

In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;

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

History Note: Authority G.S. 97-80(a); 143-166.4;
Eff. July 1, 2014;
Recodified from 04 NCAC 10H .0206 Eff. June 1, 2018.