

11 NCAC 23A .0609 MOTIONS PRACTICE

(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.

(e) All motions and responses 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.

(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, and any effort made by the moving party to resolve the issue in dispute before filing of the motion. Service shall be made on all opposing attorneys of record, or on all opposing parties if not represented.

(g) Motions to continue or remove a case from the hearing calendar on which the case is set shall be made as far 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 of the other parties regarding the motion, or that there has been a reasonable attempt to contact the opposing party and ascertain its position regarding the motion.

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

(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.

(j) Motions shall be ruled upon without oral argument unless the Commission determines that oral argument is necessary for a complete understanding of the issues.

(k) All written 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 Industrial Commission file number(s);
- (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 shall include the attorney and firm name, email address, telephone number, and fax number. If a party is unrepresented, then the proposed Order shall 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;
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