



Update on Recent Industrial Commission Rulemaking

*Gina Cammarano, Rulemaking Coordinator
North Carolina Industrial Commission*



Overview of Today's Presentation

- Rule changes over the last year, including technical amendments, emergency rule, and temporary rule;
- Current permanent rulemaking;
- Rules to watch in the future;
- Rulemaking Coordinator contact information and NCIC Rules Listserv information;
- Helpful Links for NCIC Rules.

“Technical Correction” Amendments

- Amended Rules

- Rule 11 NCAC 23A .0619, *Foreign Language and Sign Language Interpreters*; Amended effective April 1, 2020;
- Rule 11 NCAC 23E .0101, *Instructions for Filing a Petition for Rule-Making*; Amended effective April 1, 2020;
- Rule 11 NCAC 23E .0102, *Mailing List*; Amended effective April 1, 2020;
- Rule 11 NCAC 23A .0406, *Discount Rate to be Used in Determining Commuted Values*; Amended effective October 1, 2019.

Emergency Rulemaking

- **Rule 11 NCAC 23G .0104, *Duties of Parties, Representatives, and Attorneys*;**
 - Emergency rule adopted by Industrial Commission as part of its COVID-19 response and in order to protect the public health and safety.
Emergency rule approved by Codifier of Rules effective June 16, 2020;
 - Emergency rule is consistent with NC Supreme Court's June 3, 2020 Order amending Rule 4(a)(2) of the *Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions*, thereby making attendance via remote technology the presumptive method of attendance in Superior Court mediations in response to the COVID-19 pandemic.

Temporary Rulemaking

- **Rule 11 NCAC 23G .0104, *Duties of Parties, Representatives, and Attorneys***
 - Temporary rulemaking initiated simultaneously with emergency rulemaking, as required by the Administrative Procedure Act;
 - Public Hearing held on June 15, 2020;
 - Written Comment Period ended July 8, 2020;
 - Industrial Commission voted to adopt temporary rule amendment on August 6, 2020;
 - Rules Review Commission approved rule at August 20, 2020 meeting;
 - Temporary rule amendment effective August 28, 2020.

Permanent Rulemaking

- **“Group 3” Rules (Rules 11 NCAC 23A .0104, .0408, .0409, .0501, and .0903)**
 - Industrial Commission voted to adopt “Group 3” rule changes at September 24, 2020 Commissioners’ meeting;
 - Expect rules to be considered at November 19, 2020 Rules Review Commission meeting;
 - If approved by Rules Review Commission and not subject to legislative review, expect rule changes to be effective December 1, 2020.

Permanent Rulemaking

- **Rule 11 NCAC 23E .0104, *Secure Leave Periods for Attorneys***
 - Industrial Commission voted to adopt rule changes at September 24, 2020 Commissioners' meeting;
 - Expect rule to be considered at November 19, 2020 Rules Review Commission meeting;
 - If approved by Rules Review Commission and not subject to legislative review, expect rule changes to be effective December 1, 2020.

Permanent Rulemaking

- **Form 26A (Rule 11 NCAC 23L .0103)**
 - Industrial Commission voted to adopt form changes at September 24, 2020 Commissioners' meeting;
 - Expect form to be considered at November 19, 2020 Rules Review Commission meeting;
 - If approved by Rules Review Commission and not subject to legislative review, expect form changes to be effective December 1, 2020.

Permanent Rulemaking

- **New Tort Claims Rule (11 NCAC 23B .0106, *Notice by the Commission*)**
 - Industrial Commission voted to adopt new rule at September 24, 2020 Commissioners' meeting;
 - Expect new rule to be considered at November 19, 2020 Rules Review Commission meeting;
 - If approved by Rules Review Commission and not subject to legislative review, expect new rule to be effective December 1, 2020.

Permanent Rulemaking

- **Rule changes regarding electronic filing requirements for certain documents and filers (Rule 11 NCAC 23A .0108; Rule 11 NCAC 23B .0104)**
 - Industrial Commission voted to adopt rule changes at September 24, 2020 Commissioners' meeting;
 - Expect rule changes to be considered at November 19, 2020 Rules Review Commission meeting;
 - If approved by Rules Review Commission and not subject to legislative review, expect rule changes to be effective February 1, 2021.

Permanent Rulemaking

- **Rule changes regarding how contact information is transmitted to the Industrial Commission (Rules 11 NCAC 23A .0109 and .0302; Rule 11 NCAC 23B .0105)**
 - Industrial Commission voted to adopt rule changes at September 24, 2020 Commissioners' meeting;
 - Expect rule changes to be considered at November 19, 2020 Rules Review Commission meeting;
 - If approved by Rules Review Commission and not subject to legislative review, expect rule changes to be effective February 1, 2021.

Permanent Rulemaking

- **Changes to Forms 21, 26, 26A, and T-42 regarding filing and other instructions and notices (Rules 11 NCAC 23L .0101, .0102, .0103, and .0105)**
 - Industrial Commission voted to adopt form changes at September 24, 2020 Commissioners' meeting;
 - Expect form changes to be considered at November 19, 2020 Rules Review Commission meeting;
 - If approved by Rules Review Commission and not subject to legislative review, expect form changes to be effective February 1, 2021.

Permanent Rulemaking

- **Rule 11 NCAC 23G .0104, *Duties of Parties, Representatives, and Attorneys***
 - Permanent rule change, if approved, will allow the Industrial Commission's mediation rule to always be "substantially similar" to the mediation rules approved by the Supreme Court for use in the Superior Court division, as required by G.S. §97-80(c), in terms of the presumptive method of attendance (in-person versus remote);
 - Fiscal note has been approved by OSBM;
 - Public Hearing and Written Comment Period is required and will be announced when rule is filed for publication in NC Register.

Potential Future Rulemaking

- **Rule 11 NCAC 23A .0109, *Contact Information*;**
- **New filing rule for video exhibits;**
- **Additional new rules and rule amendments related to new case management system;**
- **Additional rule amendments to Tort Claims Rules.**

Keep in Touch!

RULEMAKING COORDINATOR CONTACT INFORMATION:

- Send an email to gina.cammarano@ic.nc.gov with any questions or comments about Industrial Commission rules; or
- Call Gina Cammarano at 919-807-2524 with any questions or comments about Industrial Commission rules.

RULES LISTSERV:

- Send an e-mail to gina.cammarano@ic.nc.gov to be added to the NCIC Rules Listserv.

Helpful Links for NCIC Rules

- Industrial Commission Rules on NCIC website:
 - <https://www.ic.nc.gov/abtrules.html>
- Industrial Commission Rules on OAH website:
 - <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title 11 - Insurance\Chapter 23 - Industrial CommissionRules Review Commission>
- Rules Review Commission website:
 - <https://www.oah.nc.gov/rules-division/rules-review-commission>
- Administrative Procedure Act (Chapter 150B of NC General Statutes):
 - <https://ncleg.gov/Laws/GeneralStatuteSections/Chapter150B>