

Pat McCrory, Governor
Andrew T. Heath, Chairman



Bernadine S. Ballance, Commissioner
Linda Cheatham, Commissioner
Danny L. McDonald, Commissioner
Tammy R. Nance, Commissioner
Pamela T. Young, Commissioner

North Carolina Industrial Commission

January 30, 2014

Via Email: govops@ncleg.net

Senator Phil Berger, President Pro Tempore of the Senate
Representative Thom Tillis, Speaker of the House
Fiscal Research Division
Joint Legislative Commission on Governmental Operations

Re: Consultation on Proposed Agency Rules Involving Fees

Dear Commission Members:

Please accept this letter as the North Carolina Industrial Commission's request for consultation regarding fees in proposed agency rules pursuant to G.S. 12-3.1.

In 2011, the Industrial Commission became subject to the Administrative Procedure Act (Chapter 150B) pursuant to Session Law 2011-287. The Commission did not previously have rules in the Administrative Code for the fees it charged for hearings and the processing of certain documents and applications. Therefore, in 2012, the Industrial Commission adopted two permanent fee rules regarding these fees. After approval by the Rules Review Commission, 10 or more letters were written objecting to these two fee rules and the rules were subjected to legislative review. Pursuant to Session Law 2013-294, the two rules were disapproved and the Commission was directed to use the temporary rule making time lines to adopt new permanent rules to replace them before the beginning of the 2014 Regular Session.

Following extensive stakeholder input from both employee and employer representatives, the Commission provided the proposed permanent rules to the Rules Division of the Office of Administrative Hearings (OAH) for publication on Friday, January 24, 2014. The rules were published by OAH on its website on January 29, 2014, and can be found at this link, <http://www.oah.state.nc.us/rules/04NCAC10A.B.C.D.E.G.H.I.J.Lproposedrules.pdf>. These two proposed permanent rules are:

1. 04 NCAC 10E .0202, Hearing Costs or Fees, and
2. 04 NCAC 10E .0203, Fees Set by the Commission.

The proposed 04 NCAC 10E .0202, Hearing Costs or Fees, establishes a rule in the Administrative Code for the \$120 fee charged for hearings before Deputy Commissioners and the \$220 fee charged for hearings before the Full Commission. These fees are also charged if a case is withdrawn, removed, or dismissed after it

has been set on a hearing calendar. The rule also provides for the waiver of the fees, the assessment of the fees against a party who sought a hearing without reasonable ground, and the assessment of penalties for failure to pay the fees. The authority to charge fees for these hearings comes from G.S. 97-73(a) and G.S. 143-291.1, 143-291.2.

The following changes were made from the disapproved version of 04 NCAC 10E .0202:

1. Charge the \$120 fee when a scheduled case is continued from the hearing docket to be rescheduled for a later date.
2. Omit fees for cases withdrawn, removed, or dismissed before the case is set on a hearing calendar.

These changes were made with stakeholder input and are intended to simplify the fee schedule while still producing the receipts necessary to support the Industrial Commission's operations. The fees charged pursuant to 04 NCAC 10E .0202 are paid by employers with only one exception: that an injured employee pays the \$120 fee to continue a scheduled case to a later hearing docket if the employee requests the continuance.

The proposed 04 NCAC 10E .0203, Fees Set by the Commission, establishes a rule in the Administrative Code for the fees charged for the following:

1. Review of compromise settlement agreements (G.S. 97-17) - \$400.00,
2. Review of form agreements for payment of disability compensation (G.S. 97-82) - \$300.00,
3. Processing of I.C. Form No. MSC5, *Report of Mediator* (G.S. 97-80(c)) - \$200.00,
4. Filing of I.C. Form No. 33I, *Intervenor's Request that Claim be Assigned for Hearing* (G.S. 97-26(i)) – a fee equal to that required to file a civil action in Superior Court as set by AOC, and
5. Filing of claims brought under State Tort Claims Act (G.S. 143-291) - a fee equal to that required to file a civil action in Superior Court as set by AOC.

The authority to charge fees for the review and processing of these documents comes from G.S. 97-73(a) and G.S. 143-291.2.

The following changes were made from the disapproved version of 04 NCAC 10E .0203:

1. Eliminate certain smaller fees charged for various other types of documents, including *inter alia* the elimination of the Form 24 *Application to Terminate or Suspend Payment of Compensation*,
2. Raise the fee charged for the review of compromise settlement agreements from \$375.00 to \$400.00 and distribute the burden of the fee evenly between the plaintiff and defendants, with the plaintiff's share to be deducted from the settlement funds unless defendants agree to pay the entire fee,
3. Raise the fee charged for review of form agreements from \$250.00 to \$300.00, and distribute the fee evenly between the plaintiff and defendants, with the plaintiff's share to be deducted from the award if the award is more than \$3,000.00, unless defendants agree to pay the entire fee, and
4. Establish a new \$200.00 fee for the processing of the I.C. Form No. MSC5, *Report of Mediator*, to be evenly distributed between the plaintiff and defendants, with the defendants paying the fee to the Commission and receiving reimbursement for plaintiff's half of the fee if and when benefits are determined to be due to plaintiff, unless defendants agree to pay the entire fee.

These changes were made with stakeholder input and are intended to simplify the fee schedule while still producing the receipts necessary to support the Industrial Commission's operations. It should be noted that injured employees are not required to pay any of the fees set in this rule in advance. Rather, the employee's share of the fees is to be deducted from settlement or award funds due to the employee.

As rulemaking coordinator, I ask that you do not hesitate to contact me or Andrew T. Heath, Chairman of the Industrial Commission, with any questions you may have.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Meredith R. Henderson", with a long, sweeping horizontal line extending to the right.

Meredith R. Henderson
Executive Secretary

cc: Cathy Davis, Commission Assistant
Aubrey Incorvaia, Fiscal Research Division