# Utilizing Pre-Hearing Depositions in NC Under N.C.G.S. § 97-80(d)

## Practices

Workers' Compensation

**December 15, 2021**

## Option 1:

In North Carolina, unlike many other states, pre-hearing depositions are not automatically allowed under the North Carolina Workers' Compensation Act.

If you want to take a pre-hearing deposition, you need either (1) the consent of the opposing party, or (2) an order from the Commission allowing you to take the deposition. *See* N.C. Gen. Stat. § 97-80(d).

While frustrating, there is a solution. By simply filing a motion with the Commission, "setting out the materiality of the evidence to be given" by the deponent, we can get approval to depose an expert witness, lay witness, or even the claimant himself.

Strategically, a pre-hearing deposition is an underutilized tool available to us that can effectively and expeditiously advance a case towards resolution.

## Option 2:

In North Carolina, unlike many other states, pre-hearing depositions are not automatically allowed under the North Carolina Workers' Compensation Act.

Parties can only take a pre-hearing deposition by (1) consent of the opposing side; or (2) an Order from the Commission approving the deposition. *See* N.C. Gen. Stat. § 97-80(d).

While this is not ideal, there is a solution. By simply filing a motion with the Commission setting out the evidence anticipated to be given by the deponent, a party can get approval to depose an expert witness.

Strategically, a pre-hearing deposition is an underutilized tool available to parties that can effectively and expeditiously advance a case towards resolution.

*If you have questions regarding this Practice Pointer or are interested in a 1-hour NC DOI approved CE on depositions for your group, please contact a Hedrick Gardner attorney.*

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