

NOTICE OF PROPOSED INDUSTRIAL COMMISSION RULEMAKING

OCTOBER 15, 2018

Notice is hereby given in accordance with G.S. 150B-21.2 that the Industrial Commission intends to adopt the rules cited as 11 NCAC 23B .0105; 23L .0105, amend the rules cited as 11 NCAC 23B .0101-.0104, .0202-.0205, .0208, .0302, .0307, .0308, .0310, .0402, .0501, and repeal the rules cited as 11 NCAC 23B .0303 and .0305.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ic.nc.gov/proposedtortrules.html>

Proposed Effective Date: February 1, 2019

Oral comments on the proposed rules may be made at the Public Hearing before the Industrial Commission:

Date: November 29, 2018

Time: 10:00 a.m.

Location: Room 245, 2nd Floor, Department of Insurance, Albemarle Building, 325 North Salisbury Street, Raleigh, NC 27603

Written comments may be submitted to: Ashley B. Snyder, 1233 Mail Service Center, Raleigh, NC 27699-1233; phone (919) 807-2524; email ashley.snyder@ic.nc.gov

Comment period ends: December 14, 2018

Reason for Proposed Action: *On its own initiative, the Industrial Commission conducted an internal review of its rules governing State tort claims. The proposed adoptions, amendments, and repeals represent changes necessary to improve and clarify the rules, provide for increased efficiency, or to update the rules to reflect current processes. The Commission also proposes to adopt Rule 11 NCAC 23L .0105 which codifies a new form, the T-42, required in the proposed amendments to Rule 11 NCAC 23B .0203.*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

State funds affected 11 NCAC 23B .0104, .0105, .0202, .0204, .0205, .0302, .0310, .0501

Environmental permitting of DOT affected

Analysis submitted to Board of Transportation

Local funds affected 11 NCAC 23B .0104, .0204, .0302, .0310, .0501

Substantial economic impact (≥\$1,000,000)

Approved by OSBM

No fiscal note required by G.S. 150B-21.4 11 NCAC 23B .0101-.0103, .0203, .0208, .0303, .0305, .0307, .0308, .0402; 23L .0105

CHAPTER 23 - INDUSTRIAL COMMISSION

SUBCHAPTER 23B – TORT CLAIMS RULES

SECTION .0100 – ADMINISTRATION

11 NCAC 23B .0101 LOCATION OF OFFICES MAIN OFFICE AND HOURS OF BUSINESS

~~For purposes of this Subchapter, the offices~~ The main office of the North Carolina Industrial Commission (~~Commission~~) ~~are~~ is located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not being filed electronically may be filed at the main office between the hours of 8:00 a.m. and 5:00 p.m. only. Documents ~~related to tort claims~~ are permitted to be filed electronically may be so filed until 11:59 p.m. on the required filing date.

*History Note: Authority G.S. 143-291; 143-300;
Eff. January 1, 1989;*

Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0101 Eff. June 1, 2018;
Amended Eff. _____.

11 NCAC 23B .0102 OFFICIAL FORMS

(a) Copies of the Commission's ~~rules, forms, and minutes~~ rules and forms regarding tort claims can be obtained by contacting the Commission in ~~person, person~~ at the address in Rule .0101 of this Section, by written request mailed to 4340 1236 Mail Service Center, Raleigh, NC ~~27699-4340, 27699-1236~~, Attn.: Office of the Clerk, or from the Commission's ~~website~~ website at <http://www.ic.nc.gov/abtrules.html> and <http://www.ic.nc.gov/forms.html>.

(b) The use of any printed forms other than those provided by the Commission is prohibited, except that ~~insurance carriers, self-insureds, attorneys and other~~ parties may reproduce current Commission forms for their own use, provided:

- (1) ~~No~~ no statement, question, or information blank contained on the Commission form is omitted from the substituted ~~form~~ form; and
- (2) ~~The~~ the substituted form is identical in size and format ~~with~~ to the Commission form.

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0102 Eff. June 1, 2018;
Amended Eff. _____.

11 NCAC 23B .0103 FILING FEES

(a) No tort claim shall be accepted for filing with the Commission unless the claim is accompanied by an attorney's check, certified check, money order, or electronic transfer of funds in payment of a filing fee in an amount equal to the filing fee required for the filing of a civil action in the Superior Court division of the General Court of Justice.

(b) The provisions of Paragraph (a) of this Rule notwithstanding, a tort claim that is accompanied by a Petition to Sue as an Indigent shall be accepted for filing upon the date of its receipt.

(c) A Petition to Sue as an Indigent shall consist of an affidavit sufficient to satisfy the provisions of G.S. 1-110, stating that plaintiff is unable to comply with Paragraph (a) of this Rule.

(d) If the Commission determines the plaintiff is able to pay ~~all or any part of the fees~~ fee assessed under this Rule, an Order shall be issued directing payment of ~~all or any part of that fee~~, and the plaintiff shall, within 30 days from ~~his~~ receipt of the Order, forward to the Commission an attorney's check, certified check, money order, or electronic ~~fund~~ transfer of funds for the full amount required to be paid. Failure to submit the required amount of the filing fee within this time shall result in the tort claim being dismissed without prejudice.

(e) Upon consideration of a prison inmate's Petition to Sue as an Indigent, the Commission may determine that the inmate's tort claim is frivolous and dismiss the claim pursuant to G.S. 1-110. Appeals from the dismissal of a frivolous tort claim pursuant to ~~this statute~~ G.S. 1-110 shall proceed directly to the Full Commission and shall be decided without oral argument. ~~The Commission shall forward a copy of the file to the Attorney General's Office without cost upon plaintiff's notice of appeal to the Full Commission.~~

History Note: Authority G.S. 143-291.2; 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0103 Eff. June 1, 2018;
Amended Eff. _____.

11 NCAC 23B .0104 ~~FILING BY FACSIMILE TRANSMISSION~~ FILING BY ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

~~Filing documents pertaining to tort claims by facsimile transmission is permitted. Any filing fee required shall be received by the Commission contemporaneously with the facsimile by electronic transfer of funds.~~

(a) All filings to the Commission in tort claims shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Plaintiffs without legal representation may file all documents with the Office of the Clerk of the Commission via the Commission's Electronic Document Filing Portal ("EDFP"), electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) Except as set forth in Paragraph (c) of this Rule, all documents shall be transmitted to the Commission via EDFP. Information regarding how to register for and use EDFP is available at <http://www.ic.nc.gov/training.html>. In the event EDFP is inoperable, all documents required to be filed via EDFP shall be transmitted to the Commission via electronic mail to edfp@ic.nc.gov. Documents required to be filed via EDFP that are sent to the Commission via electronic mail when EDFP is operable shall not be accepted for filing.

(c) The tort claims forms and documents listed in Table 1 shall not be required to be transmitted via EDFP provided all applicable qualifying conditions are met.

Table 1: Forms and documents exempt from EDFP filing requirements and how to file them:

DOCUMENT	QUALIFYING CONDITION(S)	HOW TO FILE
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<u>Form T-1</u>	<u>No IC file number has been assigned</u>	<u>Hand delivery to the Industrial Commission's main office or by mail to 1236 Mail Service Center, Raleigh, North Carolina 27699-1236.</u>
<u>Form T-3</u>	<u>No IC file number has been assigned</u>	<u>Email to dockets@ic.nc.gov, hand delivery to the Industrial Commission's main office, or by mail to 1236 Mail Service Center, Raleigh, North Carolina; 27699-1236</u>
<u>Pre-affidavit motion under Rule 9(j)(3) of the Rules of Civil Procedure to extend the Statute of Limitations.</u>	<u>No IC file number has been assigned.</u>	<u>Hand delivery to the Industrial Commission's main office or by mail to 1236 Mail Service Center, Raleigh, North Carolina 27699-1236.</u>

(d) A one-year waiver shall be granted to an attorney that notifies the Commission of the attorney's inability to comply with the electronic filing requirements in Paragraph (a) of this Rule due to a lack of the necessary internet technology resources. The notification shall indicate why the attorney is unable to comply with the rule and outline the attorney's plan for coming into compliance within the one-year period. The notification shall be filed with the Office of the Clerk of the Commission via facsimile or U.S. Mail. This Paragraph shall expire one year from the effective date of this Rule.

(e) Any party may apply to the Commission for an emergency temporary waiver of the electronic filing requirement set forth in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.

(f) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDPF or U.S. Mail.

History Note: Authority G.S. 143-291; 143-291.2; 143-297; 143-300; Eff. May 1, 2000; Amended Eff. July 1, 2014; Recodified from 04 NCAC 10B .0104 Eff. June 1, 2018; Amended Eff. _____.

11 NCAC 23B .0105 CONTACT INFORMATION

(a) "Contact information" for purposes of this Rule shall include telephone number, facsimile number, email address, and mailing address.

(b) All persons or entities without legal representation with matters pending before the Commission shall advise the Commission upon any change in contact information by filing a written notice via the Commission's Electronic Document Filing Portal ("EDFP"), electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(c) Any plaintiff without legal representation who was an inmate in the North Carolina Division of Adult Corrections at the time of filing his or her tort claim, shall, within 30 days of release, provide the Commission with written notice of his or her post-release contact information in any manner authorized in Paragraph (b) of this Rule. Following the initial written notice of post-release contact information, the previously incarcerated plaintiff shall continue to advise the Commission upon any change in contact information in accordance with Paragraph (b) of this Rule.

(d) All attorneys of record with matters before the Commission shall inform the Commission in writing of any change in the attorney's or the represented party's contact information via email to dockets@ic.nc.gov.

History Note: Authority G.S. 143-291, 143-300; Eff. _____.

SECTION .0200 - CLAIMS PROCEDURES

11 NCAC 23B .0202 MEDICAL MALPRACTICE CLAIMS BY UNREPRESENTED PRISON INMATES

(a) In any tort claim ~~medical malpractice cases~~ filed by ~~or on behalf of~~ an unrepresented prison inmates inmate where the plaintiff is alleging in which the Commission determines that the plaintiff is alleging that a health care ~~provider~~ provider, as defined in G.S. 90-21.11 ~~90-21.11~~, failed to comply with the applicable standard of care under G.S. 90-21.12 ~~90-21.12~~, and ~~or~~ the defendant has filed a ~~Motion to Dismiss~~ moved to dismiss the ~~claim~~, claim for failure to comply with Rule 9(j) of the North Rules of Civil Procedure, all discovery is stayed until the following occur: a recorded non-evidentiary hearing before the Commission is held for the purpose of determining whether a claim for medical malpractice has been stated and, if so, whether:

- (1) A recorded hearing in which no evidence is taken is held before a Deputy Commissioner or a Special Deputy Commissioner for the purpose of determining:
 - (A) whether a claim for medical malpractice has been stated;
 - (B)(1) whether expert testimony is necessary for the plaintiff to prevail; and plaintiff must meet the requirements of Rule 9(j)(1) or (2) of the North Carolina Rules of Civil Procedure to proceed with the claim; or

- (2) plaintiff has alleged facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.
- (C) ~~if expert testimony is deemed necessary, whether the plaintiff will be able to produce such testimony on the applicable standard of care.~~
- (2) ~~Upon receipt of a Motion to Dismiss and Request for Hearing from the defendant, the Commission issues an order setting the motion on a hearing docket and the case is assigned to a Deputy Commissioner or a Special Deputy Commissioner.~~

If the Commission determines that a claim for medical malpractice has been stated, and plaintiff must meet the requirements of Rule 9(j)(1) or (2) of the North Carolina Rules of Civil Procedure, the defendant shall produce medical records to the plaintiff within the time period prescribed by the Commission. Upon receipt of the medical records, the plaintiff shall then have 120 days to comply with Rule 9(j) of the North Carolina Rules of Civil Procedure.

~~(b) If the defendant's Motion to Dismiss is granted, an appeal lies to the Full Commission.~~

~~(c) If defendant's Motion to Dismiss is denied, the case shall proceed as any other tort claims case. Defendant shall produce medical records to plaintiff within 45 days of the Order of the Commission denying defendant's Motion to Dismiss. Plaintiff shall then have 120 days to comply with Rule 9(j) of the North Carolina Rules of Civil Procedure.~~

History Note: Authority G.S. 143-300;
 Eff. January 1, 1989;
 Recodified from 04 NCAC 10B .0206 Eff. April 17, 2000;
 Amended Eff. July 1, 2014; May 1, 2000;
 Recodified from 04 NCAC 10B .0202 Eff. June 1, 2018;
 Amended Eff. _____.

11 NCAC 23B .0203 INFANTS AND INCOMPETENTS

(a) Persons seeking to appear on behalf of an infant or incompetent, in accordance with G.S. 1A-1, Rule 17, shall apply on a ~~Form 42~~ Form T-42 Application for Appointment of Guardian Ad Litem. ad Litem. The Commission shall appoint a fit and proper person as guardian ad litem, if the Commission determines it to be in the best interest of the minor or incompetent. The Commission shall appoint the guardian ad litem only after due inquiry as to the fitness of the person to be appointed.

(b) 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 minor or incompetent as part of the costs.

History Note: Authority G.S. 143-291; 143-295; 143-300;
 Eff. January 1, 1989;
 Recodified from 04 NCAC 10B .0307 Eff. April 17, 2000;
 Amended Eff. July 1, 2014; May 1, 2000;
 Recodified from 04 NCAC 10B .0203 Eff. June 1, 2018;
 Amended Eff. _____.

11 NCAC 23B .0204 MOTIONS

(a) All motions regarding tort claims shall be filed pursuant to Rule .0104 of this Subchapter. ~~with the Docket Section, unless the case is currently calendared before a Commissioner or Deputy Commissioner. All motions in calendared cases shall be filed with the Commissioner or Deputy Commissioner.~~

(b) A motion shall state ~~with particularity~~ based with particularity the grounds on which it is based, the relief sought, and ~~a statement of the opposing party's position, if known, or that the opposing party's position could not be ascertained after a good faith effort.~~ Service shall be made on all opposing attorneys of record, or on all opposing parties, if not represented.

(c) At the same time a motion is filed, the party filing the motion shall provide a copy of the motion to all opposing attorneys of record, or on all opposing parties, if not represented.

~~(e)(d)~~ All motions and responses thereto filed electronically shall include a proposed Order in Microsoft Word format to be considered by the Commission.

~~(d)(e)~~ By motion of the parties, or on its own motion, the Commission may enlarge the time for an act required or allowed to be done under the Rules in this Subchapter in the interests of justice or to promote judicial economy. An enlargement of time may be granted either before or after the relevant time requirement has elapsed.

~~(e)(f)~~ Motions to continue or remove a case from the hearing docket shall be made as much in advance ~~as possible~~ of the scheduled hearing as possible and shall be made in writing. The moving party shall state that the other parties have been advised of the motion and relate the position of the other parties regarding the motion. Oral motions are permitted in emergency situations.

~~(f)(g)~~ The responding party to a motion, with the exception of motions to continue or to remove a case from a hearing docket, has 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.

~~(g)(h)~~ Notwithstanding Paragraph ~~(f)(g)~~ of this Rule, a motion may be acted upon at any time by the Commission, despite the absence of notice to all parties and without awaiting a response. ~~A party who has not received actual notice of the motion or who has not filed a response at the time such action is taken and who is adversely affected by the ruling may request that it be reconsidered, vacated, or modified.~~ Motions shall be determined without oral argument, unless the Commission orders otherwise in the interests of justice.

~~(h) When a Motion to Amend Pleadings has been filed, served upon opposing parties, and not previously ruled upon, the Commissioner or Deputy Commissioner may permit amendment of pleadings at the time of the hearing and then proceed to a determination of the case based on the evidence presented at the time of the hearing without requiring additional pleadings.~~

- (i) Motions to dismiss or for summary judgment filed by the defendant on the ground that plaintiff has failed to name the individual officer, agent, employee or involuntary servant whose alleged negligence gave rise to the claim, or has failed to properly name the department or agency of the State with whom such person was employed, shall be ruled upon following the completion of discovery.
- (j) Motions to reconsider or amend an ~~order, opinion and award, Order or decision and order, Decision and Order~~, made prior to giving notice of appeal to the Full Commission, shall be ~~directed~~ addressed to the Deputy Commissioner who authored the ~~Opinion and Award, Order or Decision and Order~~.
- ~~(k) Upon request of either party, or upon motion of the Commission, motions shall be set for hearing before a Commissioner or Deputy Commissioner.~~

History Note: Authority G.S. 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0203 Eff. April 17, 2000;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0204 Eff. June 1, 2018;
Amended Eff. _____.

11 NCAC 23B .0205 MEDIATION (EFFECTIVE JULY 1, 2014)

- (a) ~~The parties to tort claims, by agreement or Order of the Commission, shall participate in mediation.~~ Any party participating in mediation is bound by the Rules for Mediated Settlement and Neutral Evaluation Conferences of the Commission found in 11 NCAC 23G, except to the extent the same conflict with the Tort Claims Act or the rules in this Subchapter, in which case the Tort Claims Act and the rules in this Subchapter apply.
- (b) An employee or agent of the named governmental entity or agency shall be available via telecommunication. Mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named governmental entity or agency.

History Note: Authority G.S. 143-295; 143-296; 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; January 1, 2011; May 1, 2000;
Recodified from 04 NCAC 10B .0205 Eff. June 1, 2018;
Amended Eff. _____.

11 NCAC 23B .0208 HEARING COSTS

~~Costs relating~~ Costs assessed pursuant to Rule 11 NCAC 23E .0202 in tort claims payable to the Commission are due upon receipt of a bill or statement from the Commission.

History Note: Authority G.S. 7A-305; 143-291.1; 143-291.2; 143-300;
Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0208 Eff. June 1, 2018;
Amended Eff. _____.

SECTION .0300 - APPEALS TO FULL COMMISSION

11 NCAC 23B .0302 NOTICE OF APPEAL APPEALS TO THE FULL COMMISSION

- (a) A letter expressing an intent to Notice of appeal shall be considered notice of appeal to the Full made to the Commission within the meaning of G.S. 143-292, 15 days from the date when notice of the Deputy Commissioner's Order or Decision and Order has been received. The notice of appeal shall specify, provided that the letter specifies by tort claim number and filing date, the Order, Opinion and Award, Order or Decision and Order from which appeal is taken. The notice of appeal shall include a written statement confirming that a copy of the notice of appeal has been sent to the opposing party or parties.
- (b) After receipt of the notice of appeal, the Commission shall acknowledge the notice of appeal in writing. Within 30 days of the acknowledgement, the Commission shall prepare and provide, at no charge to the parties, electronic copies of any official transcript and exhibits, along with a Form T-44 Application for Review. In cases where it is not possible to provide a party with the official transcript and exhibits electronically, the Commission shall provide the official transcript and exhibits and a Form T-44 Application for Review via any class of U.S. mail that is fully prepaid.
- (c) Within 25 days of receipt of the official transcript and exhibits, or receipt of notice that there will be no official transcript and exhibits, the appellant shall submit a Form T-44 Application for Review or written statement stating with particularity all assignments of error and grounds for review, including, where applicable, the pages in the transcript or the record on which the alleged errors are recorded. The Form T-44 Application for Review or the written statement shall include confirmation that a copy of the document has been sent to the opposing party or parties. Failure to file the proposed issues on appeal, either by Form T-44 Application for Review or by written statement, may result in the dismissal of the appeal either upon the motion of the non-appealing party or upon the Full Commission's own motion.
- (d) An appellant may file a brief in support of the grounds for appeal with the Commission, with a written statement confirming that a copy of the brief has been sent to the opposing party or parties, within 25 days after receipt of the official transcript and exhibits or receipt of notice that there will be no official transcript and exhibits. The appellee shall have 25 days from service of the appellant's brief to file a reply brief with the Commission, with a written statement confirming that a copy of the brief has been sent to the opposing party or parties. When the appellant fails to file a brief, the appellee shall file a brief within 25 days after the appellant's time for filing a brief has expired. If multiple parties appeal, each party may file an appellant's brief and appellee's brief on the schedule set forth in this Rule.

If the matter has not been calendared for hearing, any party may file a written stipulation to a single extension of time not to exceed 15 days with the Office of the Clerk. In no event shall the cumulative extensions of time exceed 30 days. A party who fails to file a brief shall not be allowed oral argument before the Full Commission.

(e) Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter, and when possible, to the South Eastern Reporter. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing counsel or members of the Commission.

(f) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length of attachments. Typed briefs shall be prepared using 12-point proportional type, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When a party quotes or paraphrases testimony or evidence from the official transcript or exhibits in a brief, the party shall include, at the end of the sentence, a parenthetical entry that designates the source and page number of the quoted or paraphrased material. The party shall use "T" for transcript and "Ex" for exhibit. For example, (1) if a party quotes or paraphrases material located in the transcript on page 11, the party shall use the following format "(T 11)" and (2) if a party quotes or paraphrases material located in an exhibit on page 12, the party shall use the following format "(Ex 12)". When a party quotes or paraphrases testimony or other evidence in the transcript of a deposition, the party shall include, at the end of the sentence, a parenthetical entry that contains the name of the person deposed and the page number location within the transcript of the deposition. For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of the transcript of the deposition, the party shall use the following format "(Smith 11)".

(g) Any request for review by the Full Commission of an order by a Commissioner or Deputy Commissioner made during the pendency of a case assigned to them shall be filed with the Office of the Clerk. If the order made by the authoring Commissioner or Deputy Commissioner is a final judgment as to one or more issues or parties and the order contains a certification that there is no just reason for delay, the request for review shall be referred directly to a panel of the Full Commission. If the order contains no certification, requests for review will be referred to the Chair of the Commission for a determination regarding the right to immediate review, and the parties shall address the grounds upon which immediate review shall be allowed.

History Note: Authority G.S. 143-292; 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0302 Eff. June 1, 2018;
Amended Eff. _____.

11 NCAC 23B .0303 PROPOSED ISSUES ON APPEAL

History Note: Authority G.S. 143-292; 143-300; 362 N.C. 191 (2008).

11 NCAC 23B .0305 BRIEFS TO THE FULL COMMISSION

History Note: Authority G.S. 143-296; 143-300.

11 NCAC 23B .0307 MOTIONS BEFORE THE FULL COMMISSION

(a) After notice of appeal has been given to the Full Commission, any motions related to the claim before the Full Commission shall be in writing and filed with the Full Commission, with ~~service on~~ a statement confirming that copies have been provided to the other parties. A Motion for a New Hearing must be supported by an Affidavit.

(b) ~~A Motion for a New Hearing must be filed in writing, and supported by Affidavit.~~ Motions related to the issues for review on appeal, including motions for new trial, to amend the record, or to take additional evidence, filed during the pendency of an appeal to the Full Commission shall be argued before the Full Commission at the time of the hearing of the appeal.

History Note: Authority G.S. 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0308 effective April 17, 2000;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0307 Eff. June 1, 2018;
Amended Eff. _____.

11 NCAC 23B .0308 STAYS

When a case is appealed to the Full Commission, all ~~orders, opinion and awards, Orders or decision and orders~~ Decision and Orders of a Deputy Commissioner are stayed pending appeal.

History Note: Authority G.S. 143-292; 143-296; 143-300;
Eff. May 1, 2000;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0308 Eff. June 1, 2018;
Amended Eff. _____.

11 NCAC 23B .0310 WAIVER OF ORAL ARGUMENT

Upon the request of a party or its own motion, the Commission may waive oral argument 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.

(a) A party may waive oral argument at any time with approval of the Commission. Upon the request of a party or on its own initiative, the Commission may review the case and file an Order or Decision and Order without oral argument.

(b) When presenting oral argument, each appellant(s) shall have 20 minutes to present oral argument and may reserve any amount of the 20-minute total allotment for rebuttal, unless otherwise specified by Order of the Commission. Each appellee(s) shall also have 20 minutes to present oral argument, unless otherwise specified by Order of the Commission; however, the appellee(s) may not reserve rebuttal time. In the case of cross-appeals, each appealing party may reserve rebuttal time.

(c) Any party may request additional time to present oral argument in excess of the standard twenty-minute allowance. Such requests shall be made in writing and submitted to the Full Commission no less than 10 days prior to the scheduled hearing date. The written request for additional time shall state with specificity the reason(s) for the request of additional time and the amount of additional time requested.

(d) If any party fails to appear before the Full Commission upon the call of the case, the Commission may disallow the party's right to present oral argument. If neither party appears upon the call of the case, the Full Commission may decide the case upon the record and briefs on appeal, unless otherwise ordered.

(e) Parties shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing counsel or members of the Commission.

*History Note: Authority G.S. 143-292; 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0311 Eff. April 17, 2000;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0310 Eff. June 1, 2018;
Amended Eff. _____.*

SECTION .0400 - APPEALS TO THE COURT OF APPEALS

11 NCAC 23B .0402 STAYS

When a case is appealed to the Court of Appeals, all ~~orders, opinion and awards, Orders or decision and orders~~ Decision and Orders of the Full Commission are stayed pending appeal.

*History Note: Authority G.S. 143-292; 143-294; 143-296; 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0402 Eff. June 1, 2018;
Amended Eff. _____.*

SECTION .0500 – RULES OF THE COMMISSION

11 NCAC 23B .0501 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 request of a party or upon its own initiative only if the employee plaintiff 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. 143-291; 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0501 Eff. June 1, 2018;
Amended Eff. _____.*

SUBCHAPTER 23L – INDUSTRIAL COMMISSION FORMS

SECTION .0100 – WORKERS' COMPENSATION FORMS

11 NCAC 23L .0105 FORM T-42 – APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM

(a) Persons seeking to appear on behalf of an infant or incompetent shall apply on a Form T-42, Application for Appointment of Guardian Ad Litem, in accordance with Rule 11 NCAC 23B .0203. The Form 7-42, Application for Appointment of Guardian Ad Litem, shall read as follows:

North Carolina Industrial Commission

IC File # T-_____

Application for Appointment of Guardian Ad Litem

The use of this Form is required under Rule 11 NCAC 23B .0203

_____ Plaintiff(s) v. _____ Defendant(s)

To the North Carolina Industrial Commission:

The undersigned _____ respectfully shows unto the North Carolina Industrial Commission that _____ is an infant or incompetent without general or testamentary guardian in this State, and that by reason thereof can bring an action only by a guardian ad litem; that the infant or incompetent has a cause of action against the defendants on account of the following matter and things:

The undersigned is a reputable person closely connected with the infant or incompetent having the relationship with the infant or incompetent as follows:

Wherefore, the undersigned prays the Commission that a fit and proper person be appointed Guardian Ad Litem for the infant or incompetent for the purpose of bringing on his or her behalf an action as above set out.

Signature of Applicant _____ Date _____

(Please complete page 2 of form)

Order Appointing Guardian Ad Litem

It appearing to the North Carolina Industrial Commission from the above application that _____ is an infant or incompetent having no general or testamentary guardian within this State and that said infant or incompetent appears to have a good cause of action against the defendant(s); and it further appearing to the Commission after due inquiry that _____ is a fit and proper person to be appointed guardian ad litem for the infant or incompetent for the purpose of bringing this action on his or her behalf;

It is therefore ordered that _____ be and is hereby appointed guardian ad litem of _____ to bring action on his or her behalf.

This _____ day of _____.

Commissioner or Deputy Commissioner _____

Please type or print:

Full name and address of minor or incompetent:

Birth date of minor: _____

Full name and address of proposed guardian ad litem:

Important Information for Parties

Parties should take notice of the provisions set forth in Rule 11 NCAC 23B .0203.

11 NCAC 23B .0203 Infants and Incompetents

(a) Persons seeking to appear on behalf of an infant or incompetent, in accordance with G.S. 1A-1, Rule 17, shall apply on a Form T-42 Application for Appointment of Guardian ad Litem. The Commission shall appoint a fit and proper person as guardian ad litem, if the Commission determines it to be in the best interest of the minor or incompetent. The Commission shall appoint the guardian ad litem only after due inquiry as to the fitness of the person to be appointed.

(b) 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 minor or incompetent as part of the costs.

SEND TO:

dockets@ic.nc.gov

Office of the Clerk

1236 Mail Service Center

Raleigh, NC 27699-1236

Main telephone: (919) 807-2500

Helpline (800) 688-8349

Website: <http://www.ic.nc.gov>

FORM T-42

(b) A copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/formt42.pdf>. The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/formt42.pdf> and may not be altered or amended in any way.

History Note: Authority G.S. 143-291; 143-295; 143-300;
Eff. _____.