

1 **4 NCAC 10B .0101 is proposed for amendment as follows:**

2 **SUBCHAPTER 10B – TORT CLAIMS RULES**

3 **SECTION .0100 – ADMINISTRATION**

4 **4 NCAC 10B .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS**

5 For purposes of this Subchapter, the offices of the North Carolina Industrial Commission (~~hereinafter “Industrial~~
6 ~~Commission”~~) are located in the Dobbs Building, 430 North Salisbury Street, in Raleigh, North Carolina. ~~The~~
7 ~~General Mailing Address is North Carolina Industrial Commission, 4319 Mail Service Center, Raleigh, NC 27699-~~
8 ~~4319. The same office hours will be observed by the Industrial Commission as are, or may be, observed by other~~
9 ~~State offices in Raleigh. The offices are open between~~ Documents which are not being filed electronically may be
10 filed between the hours of 8:00 a.m. and 5:00 p.m. ~~to accept documents for filing only. Documents related to tort~~
11 claims are permitted to be filed electronically until 11:59 p.m. on the required filing date.

12 *History Note:* Authority G.S. 143-291; 143-300;
13 *Eff.* January 1, 1989;
14 *Amended Eff.* January 1, 2013; May 1, 2000.

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1 **4 NCAC 10B .0102 is proposed for amendment as follows:**

2 **4 NCAC 10B .0102** ~~**TRANSACTION OF BUSINESS BY THE COMMISSION OFFICIAL**~~
3 **FORMS**

4 ~~The Industrial Commission shall remain in continuous session subject to the call of the Chair to meet as a body for the~~
5 ~~purpose of transacting such business as may come before it.~~

6 (a) Copies of the Commission’s rules, forms, and minutes regarding tort claims can be obtained by contacting the
7 Commission in person, by written request mailed to 4340 Mail Service Center, Raleigh, NC 27699-4340, or from
8 the Commission’s website.

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

11 (1) No statement, question, or information blank contained on the Commission form is omitted from
12 the substituted form.

13 (2) The substituted form is identical in size and format with the Commission form.

14 *History Note:* *Authority* G.S. 143-300;
15 *Eff.* January 1, 1989;
16 *Amended Eff.* January 1, 2013; May 1, 2000.

17

1 **4 NCAC 10B .0103 is proposed for amendment as follows:**

2 **4 NCAC 10B .0103** **OFFICIAL FORMS FILING FEES**

3 ~~(a) The Industrial Commission will supply, on request, forms identified by number and title as follows:~~

4 ~~(1) Form T 1, Claim for Damages Under Tort Claims Act, N.C. Gen. Stat. § 143-297.~~

5 ~~(2) Form T 3, Release of Tort Claim Under N.C. Gen. Stat. § 143-297, et seq.~~

6 ~~(3) Form T44, Application for Review. N.C.G.S. 143-292~~

7 ~~(4) Such other forms relating to Tort Claims which, from time to time, may be promulgated by the~~
8 ~~Industrial Commission.~~

9 ~~(b) The use of any printed forms other than those approved and adopted by the Industrial Commission is prohibited.~~

10 ~~However, a claim for damages under the Tort Claims Act, and an answer or other responsive pleading by a~~
11 ~~defendant, may be filed by way of an original typed claim or answer and other responsive pleading which is similar~~
12 ~~in format to a civil pleading in the General Courts of Justice, and which is verified.~~

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

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

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

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

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

30 *History Note:* *Authority* G.S. 143-291.2; 143-300;

31 *Eff.* January 1, 1989;

32 *Amended Eff.* January 1, 2013; May 1, 2000

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1 **4 NCAC 10B .0104 is proposed for amendment as follows:**

2 **4 NCAC 10B .0104 FILING BY ~~TELEFACSIMILE~~ FACSIMILE TRANSMISSION**

3 Filing documents pertaining to tort claims by ~~telefacsimile~~ facsimile transmission is permitted, shall be allowed
4 when specific permission is granted by the Dockets Director or by the person designated by the Chair to determine
5 matters related to the Tort Claims Act or by the Chair. If a Any filing fee is required, it must required shall be
6 received by the ~~Industrial~~ Commission contemporaneously with the ~~telefacsimile~~ facsimile either by electronic
7 transfer of funds, ~~or other procedure accepted by the Commission.~~ The Industrial Commission may adopt procedures
8 for filing by ~~telefacsimile~~ transmission in other instances.

9 *History Note:* *Authority* G.S. 143-300; 143-291; 143-291.2; 143-297;

10 *Eff.* May 1, 2000;

11 *Amended Eff.* January 1, 2013.

12

1 **4 NCAC 10B .0201 is proposed for amendment as follows:**

2 **SECTION .0200 - CLAIMS PROCEDURES**

3 **4 NCAC 10B .0201 RULES OF CIVIL PROCEDURE**

4 ~~(a)~~ The Rules of Civil Procedure as provided in ~~N.C.G.S. G.S.~~ 1A-1 shall apply in tort claims before the Industrial
5 Commission, to the extent that ~~such rules~~ the Rules of Civil Procedure are not inconsistent with the Tort Claims Act. In
6 the event of ~~such an~~ inconsistency, the Tort Claims Act and ~~these~~ the Rules in this Subchapter shall control.

7 ~~(b) In medical malpractice cases filed by or on behalf of prison inmates where the plaintiff is alleging that a health care~~
8 ~~provider as defined in G.S. § 90-21.11 failed to comply with the applicable standard of care under G.S. § 90-21.12 and~~
9 ~~the defendant has filed a Motion to Dismiss the claim, all discovery is stayed until the following occurs:~~

10 (1) ~~— An informal recorded telephonic hearing or other similar method of informal hearing as determined~~
11 ~~appropriate by the Industrial Commission is held before a Deputy Commissioner for the purpose of~~
12 ~~determining~~

13 (A) ~~— whether a claim for medical malpractice has been stated;~~

14 (B) ~~— whether expert testimony is necessary for the plaintiff to prevail; and~~

15 (C) ~~— if expert testimony is deemed necessary, whether the plaintiff will be able to produce such~~
16 ~~testimony on the applicable standard of care.~~

17 (2) ~~Upon receipt of a Motion to Dismiss and Request for Telephonic Hearing from the defendant, the~~
18 ~~Industrial Commission shall issue an order setting the motion on a hearing docket and the case will be~~
19 ~~assigned to a Deputy Commissioner. Thereafter, the parties shall have 30 days to submit medical~~
20 ~~records applicable to the claim to the Dockets Director or to the Deputy Commissioner before whom~~
21 ~~the case is set.~~

22 (3) ~~— If the defendant's Motion to Dismiss is granted, an appeal lies to the Full Commission. If defendant's~~
23 ~~Motion to Dismiss is denied, the case will proceed as any other Tort Claims case.~~

24 *History Note:* Authority G.S. 143-300;

25 *Eff.* January 1, 1989;

26 *Amended Eff.* January 1, 2013; January 1, 2011; May 1, 2000

1 **4 NCAC 10B .0202 is proposed for amendment as follows:**

2 **4 NCAC 10B .0202 FILING FEES MEDICAL MALPRACTICE CLAIMS BY PRISON**
3 **INMATES**

4 ~~(a) No claim shall be accepted for filing with the Industrial Commission which is not accompanied by an attorney's~~
5 ~~check, certified check, money order, or electronic transfer of funds in payment of a filing fee in an amount equal to~~
6 ~~the filing fee required for the filing of a civil action in the Superior Court division of the General Court of Justice.~~

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

9 ~~(c) A Petition to Sue as an Indigent shall consist of the following:~~

10 ~~(1) — An affidavit sufficient to satisfy the provisions of G.S. § 1-110, stating that~~
11 ~~plaintiff is unable to comply with Paragraph (a) of this Rule.~~

12 ~~(b) If the plaintiff is an inmate in the North Carolina Department of Correction, a report by the~~
13 ~~Department of Correction stating the balance of plaintiff's prison trust account, together with an accounting of all~~
14 ~~credits to and withdrawals from that trust account during the prior six months.~~

15 ~~(d) The granting or denial of permission to sue as an indigent shall be in the sole discretion of the Industrial~~
16 ~~Commission.~~

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

23 ~~(f) Upon consideration of an inmate's petition to sue as an indigent, the Industrial Commission may determine that~~
24 ~~the inmate's tort claim is frivolous and dismiss the claim pursuant to G.S. § 1-110. Appeals from the dismissal of a~~
25 ~~claim pursuant to the statute shall proceed directly to the Full Commission and shall be decided without oral~~
26 ~~argument. The Commission shall forward a copy of the file to the Attorney General's Office without cost upon~~
27 ~~plaintiff's notice of appeal to the Full Commission.~~

28 ~~(a) In medical malpractice cases filed by or on behalf of prison inmates where the plaintiff is alleging that a health care~~
29 ~~provider as defined in G.S. 90-21.11 failed to comply with the applicable standard of care under G.S. 90-21.12 and the~~
30 ~~defendant has filed a Motion to Dismiss the claim, all discovery is stayed until the following occurs:~~

31 ~~(1) A recorded hearing in which no evidence is taken is held before a Deputy Commissioner or a Special~~
32 ~~Deputy Commissioner for the purpose of determining~~

33 ~~(A) whether a claim for medical malpractice has been stated;~~

34 ~~(B) whether expert testimony is necessary for the plaintiff to prevail; and~~

35 ~~(C) if expert testimony is deemed necessary, whether the plaintiff will be able to produce such~~
36 ~~testimony on the applicable standard of care.~~

37

1 (2) Upon receipt of a Motion to Dismiss and Request for Hearing from the defendant, the
2 Commission issues an order setting the motion on a hearing docket and the case is assigned to
3 a Deputy Commissioner or a Special Deputy Commissioner

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

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

8 *History Note:* *Authority* G.S. 143-300;
9 *Eff.* January 1, 1989;
10 *Recodified from* 4 NCAC 10B .0206 *Eff.* April 17, 2000;
11 *Amended Eff.* January 1, 2013; May 1, 2000.
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1 **4 NCAC 10B .0203 is proposed for amendment as follows:**

2 **4 NCAC 10B .0203** **ENLARGEMENT OF TIME INFANTS AND INCOMPETENTS**

3 A Commissioner or Deputy Commissioner may upon the motion of a party or upon his own motion, enlarge the time
4 within which an action must be taken or a document filed pursuant to this Article. If the claim has not been
5 calendared, a Motion for Enlargement of Time should be directed to the Commissioner or Deputy Commissioner
6 designated by the Chair to determine Tort Claim motions. An enlargement of time may be granted either before or
7 after the relevant time requirement has elapsed.

8 (a) Consistent with G.S. 17(b), Infants or incompetents may bring a tort claim action only through their guardian ad
9 litem. Upon the written application on a Form 42 Application for Appointment of Guardian Ad Litem, the
10 Commission shall appoint a fit and proper person as guardian ad litem, if the Commission determines it to be in the
11 best interest of the minor or incompetent. The Commission shall appoint the guardian ad litem only after due
12 inquiry as to the fitness of the person to be appointed.

13 (b) No compensation due or owed to the minor or incompetent shall be paid directly to the guardian ad litem.

14 (c) Consistent with G.S. 1A-1, Rule 17(b)(2), the Commission may assess a fee to be paid to an attorney who serves
15 as a guardian ad litem for actual services rendered upon receipt of an affidavit of actual time spent in representation
16 of the minor or incompetent as part of the costs

17 *History Note:* Authority G.S. 143-300; 143-291; 143-295;
18 *Eff.* January 1, 1989;
19 *Recodified from* 4 NCAC 10B .0307 *Eff.* April 17, 2000;
20 *Amended Eff.* January 1, 2013; May 1, 2000.

1 **4 NCAC 10B .0204 is proposed for amendment as follows:**

2 **4 NCAC 10B .0204** **INFANTS AND INCOMPETENTS MOTIONS**

3 In all cases where it is proposed that minors or incompetents shall sue by their guardian *ad litem*, the Industrial
4 Commission shall appoint such guardian *ad litem* upon the written application of a reputable person closely
5 connected with such minor or incompetent; but if such person will not apply, then, upon the application of some
6 reputable citizen. The Industrial Commission shall make such appointment only after due inquiry as to the fitness of
7 the person to be appointed.

8 (a) All motions regarding tort claims shall be filed with the Docket Section, unless the case is currently calendared
9 before a Commissioner or Deputy Commissioner. All motions in calendared cases shall be filed with the Commissioner
10 or Deputy Commissioner.

11 (b) A motion shall state with particularity the grounds on which it is based, the relief sought, and a statement of the
12 opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing
13 parties, if not represented.

14 (c) All motions and responses thereto shall include a proposed Order to be considered by the Commission.

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

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

22 (f) The responding party to a motion, with the exception of motions to continue or to remove a case from a hearing
23 docket, has 10 days after a motion is served during which to file and serve copies of a response in opposition to the
24 motion. The Commission may shorten or extend the time for responding to any motion to prevent manifest injustice or to
25 promote judicial economy.

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

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

35 (i) Motions to dismiss or for summary judgment filed by the defendant on the ground that plaintiff has failed to name
36 the individual officer, agent, employee or involuntary servant whose alleged negligence gave rise to the claim, or has
37 failed to properly name the department or agency of the State with whom such person was employed, shall be ruled upon

1 following the completion of discovery.
2 (j) Motions to reconsider or amend an order, opinion and award, or decision and order, made prior to giving notice of
3 appeal to the Full Commission, shall be directed to the Deputy Commissioner who authored the Opinion and Award.
4 (k) Upon request of either party, or upon motion of the Commission, motions shall be set for hearing before a
5 Commissioner or Deputy Commissioner.

6 *History Note:* *Authority* G.S. 143-300; 143-296;
7 *Eff.* January 1, 1989;
8 *Recodified from* 4 NCAC 10B .0203 *Eff.* April 17, 2000;
9 *Amended Eff.* January 1, 2013; May 1, 2000.

1 **4 NCAC 10B .0205 is proposed for amendment as follows:**

2 **4 NCAC 10B .0205** **MOTIONS MEDIATION**

3 ~~(a) All motions in cases which are currently calendared before a Commissioner or Deputy Commissioner shall be sent~~
4 ~~directly to that Commissioner or Deputy Commissioner at the Industrial Commission. Before a case is calendared, or~~
5 ~~after a case has been continued, or removed, or after a case has been heard and a Decision and Order entered, motions~~
6 ~~shall be directed to the Executive Secretary of the Industrial Commission or the person designated by the Chair to~~
7 ~~determine these matters, if known.~~

8 ~~(b) A motion shall state with particularity the grounds on which it is based, the relief sought, and a brief statement of the~~
9 ~~opposing party's position, if known. The party making the motion shall make a reasonable and diligent effort to ascertain~~
10 ~~the position of the opposing party and if unable to do so, should specify the reasonable efforts made. A proposed Order~~
11 ~~shall be submitted with all motions. Service shall be made on all other parties.~~

12 ~~The above provisions shall not apply to inmate torts, except that service shall be made on all other parties.~~

13 ~~(c) Motions to continue or remove a case from the hearing docket on which the case is set must be made well in advance~~
14 ~~of the scheduled hearing and shall be made in writing. In all cases, the moving party must state that the other parties have~~
15 ~~been advised of the motion and relate the position of the other parties regarding the motion. Oral motions shall be~~
16 ~~permitted in emergency situations for good cause shown.~~

17 ~~(d) The responding party to a motion, with the exception of motions to continue or remove a case from a hearing docket,~~
18 ~~shall have 10 days after a motion is served upon him during which to file and serve copies of response in opposition to~~
19 ~~the motion. The Industrial Commission may shorten or extend the time for responding to any motion.~~

20 ~~(e) Notwithstanding the provisions of Paragraph (d) of this Rule, the Industrial Commission may act upon a motion at~~
21 ~~any time, despite the absence of notice to all parties, and without awaiting a response. A party who has not received~~
22 ~~actual notice of such a motion prior to the entry of a ruling by the Industrial Commission or who has not filed a response~~
23 ~~at the time such ruling is entered and who is adversely affected by the ruling may request reconsideration, vacation, or~~
24 ~~modification of the ruling. Motions will be determined without argument, unless the Industrial Commission orders~~
25 ~~otherwise.~~

26 ~~(f) In a case in which a Motion to Amend Pleadings has been filed, the Commissioner or Deputy Commissioner may~~
27 ~~permit amendment of pleadings at the time of the hearing and then proceed to a determination of the case based on the~~
28 ~~evidence presented at the hearing without requiring additional pleadings.~~

29 ~~(g) Motions to dismiss or for summary judgment for the defendant on the ground that plaintiff has failed to specifically~~
30 ~~name the individual officer, agent, employee or involuntary servant whose alleged negligence gave rise to the claim, or~~
31 ~~failure to properly name the department or agency of the State with whom such person was employed, shall be ruled~~
32 ~~upon following discovery.~~

33 ~~(h) In appropriate cases, motions may be set for hearing before a Commissioner or Deputy Commissioner upon request~~
34 ~~of either party or upon the Commission's own motion.~~

35 (a) The parties to tort claims, by agreement or Order of the Commission, shall participate in mediation. Any party
36 participating in mediation is bound by the Rules for Mediated Settlement and Neutral Evaluation Conferences of the
37 Commission found in 4 NCAC, Subchapter 10G, except to the extent the same conflict with the Tort Claims Act or the

1 Rules in this Subchapter, in which case the Tort Claims Act and the Rules in this Subchapter apply.
2 (b) Every effort shall be made to make the employee or agent of the named governmental entity or agency available via
3 telecommunication. Mediation shall not be delayed due to the absence or unavailability of the employee or agent of the
4 named governmental entity or agency.
5 (c) Consistent with 4 NCAC 10G .0101(g), the State shall not be compelled to participate in a mediation or neutral
6 evaluation procedure with a prison inmate.

7 *History Note:* *Authority* G.S. 143-300; 143-295; 143-296
8 *Eff.* January 1, 1989;
9 *Amended Eff.* January 1, 2013; January 1, 2011; May 1, 2000.

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1 **4 NCAC 10B .0206 is proposed for amendment as follows:**

2 **4 NCAC 10B .0206 HEARINGS**

3 (a) The ~~Industrial~~ Commission may, on its own motion, order a hearing, rehearing, or pre-trial conference of any tort
4 claim in dispute.

5 (b) The ~~Industrial~~ Commission shall set a contested case for hearing in a location deemed convenient to witnesses and
6 the ~~Industrial~~ Commission, and conducive to an early and just resolution of disputed issues.

7 ~~(c) In cases involving a plaintiff who is an inmate in the North Carolina Department of Correction, the Industrial
8 Commission shall set contested cases for hearing as follows:~~

9 ~~(a) In the prison unit where plaintiff is incarcerated or in some other prison facility or secure facility
10 agreed upon by the Industrial Commission and the Attorney General's office; or~~

11 ~~(b) By videoteleconference according to procedures adopted by the Industrial Commission; or~~

12 ~~(c) By telephone conference according to procedures adopted by the Industrial Commission.~~

13 ~~(d) (c)~~ The ~~Industrial~~ Commission may issue writs of habeas corpus ad testificandum in cases arising under the Tort
14 Claims Act. Requests for issuance of a writ of habeas corpus ad testificandum ~~should~~ shall be sent to the ~~Dockets~~
15 ~~Department Docket Section~~ of the ~~Industrial~~ Commission if the case has not been set on a calendar for hearing. If the
16 case has been set ~~for on a hearing calendar~~, the request ~~should~~ shall be sent to the ~~Deputy~~ Commissioner or Deputy
17 Commissioner before whom the case is set.

18 ~~(e) (d)~~ The ~~Industrial~~ Commission shall give ~~reasonable~~ notice of a hearing in every case. A motion for a continuance
19 shall be allowed only ~~in the discretion of a~~ by the Commissioner or Deputy Commissioner before whom the case is ~~set~~
20 set if required to prevent manifest injustice. Where a party has not notified the ~~Industrial~~ Commission of the attorney
21 representing the party prior to the mailing of calendars for hearing, notice to that party ~~shall constitute~~ constitutes notice
22 to the party's attorney.

23 ~~(f) (e)~~ In cases involving ~~minimal property damage, damage of less than five hundred dollars (\$500.00)~~, the
24 Commission ~~may~~ shall, upon its own motion or upon the motion of either party, order a telephonic hearing on the matter.

25 ~~(g) In cases of multiple claim filings by an inmate, the Industrial Commission may consolidate all of the claims for
26 hearing upon the motion of either party or upon the Commission's own motion. Other cases may be consolidated
27 according to Rule 42 of the North Carolina Rules of Civil Procedure.~~

28 ~~(f)~~ All subpoenas shall be issued in accordance with Rule 45 of the North Carolina Rules of Civil Procedure, with the
29 exception that production of public records or hospital records as provided in Rule 45(c)(2), shall be served upon the
30 Commissioner or Deputy Commissioner before whom the case is calendared, or upon the Docket Section of the
31 Commission should the case not be calendared.

32 ~~(h) (g)~~ In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or
33 delayed if when the proceedings ~~in~~ before the General Court of Justice ~~are cancelled in the~~ that county ~~in which the Tort~~
34 ~~Claims hearings are set~~ are cancelled or delayed.

35 *History Note:*

Authority G.S. 143-300; 143-296;

36 *Eff.* January 1, 1989;

37 *Recodified from* 4 NCAC 10B .0202 *Eff.* April 17, 2000;

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Amended Eff. January 1, 2013; January 1, 2011; May 1, 2000.

1 **4 NCAC 10B .0207 is proposed for amendment as follows:**

2 **4 NCAC 10B .0207 COSTS HEARINGS OF CLAIMS BY PRISON INMATES**

3 ~~Hearing costs shall be assessed in each case set for hearing, including those cases which are settled after being~~
4 ~~calendared and notices mailed, and shall be payable upon submission of a statement by the Industrial Commission.~~

5 ~~In addition to the filing fee, the Industrial Commission may tax costs against a party. Costs payable to the Industrial~~
6 ~~Commission are due upon receipt of a bill or statement from the Commission.~~

7 (a) In tort claims involving a plaintiff who is an inmate in the North Carolina Division of Adult Corrections, the
8 Commission shall set contested cases or motions for hearing as follows:

9 (1) in the prison unit where plaintiff is incarcerated or in some other prison facility or secure facility; or

10 (2) by videoteleconference;

11 (3) by telephone conference.

12 (b) In cases involving multiple filings by an inmate, the Commission may, in the interest of justice and for judicial
13 economy, consolidate all of the claims for hearing upon the motion of either party or upon the Commission's own
14 motion.

15 (c) Witnesses incarcerated by the North Carolina Division of Adult Corrections may be subpoenaed by a writ of habeas
16 corpus ad testificandum. Plaintiff shall file an *Application and Writ of Habeas Corpus Ad Testificandum*, with a copy to
17 the defendant, for review and approval by the Deputy Commissioner before whom the matter is calendared for an
18 evidentiary hearing consistent with the Workers' Compensation Act.

19 (d) All other subpoenas shall be issued in accordance with Rule 45 of the North Carolina Rules of Civil Procedure, with
20 the exception that production of public records or hospital records as provided in Rule 45(c)(2), shall be served upon the
21 Commissioner or Deputy Commissioner before whom the matter is calendared or upon the Docket Section of the
22 Commission should the case not be calendared.

23 *History Note:* Authority G.S. 143-300; 143-296; 97-101.1;

24 Eff. January 1, 1989;

25 Recodified from 4 NCAC 10B .0204 Eff. April 17, 2000;

26 Amended Eff. January 1, 2013; May 1, 2000.

27

1 **4 NCAC 10B .0208 is proposed for amendment as follows:**

2 **4 NCAC 10B .0208 HEARING COSTS**

3 Costs relating to tort claims payable to the Commission are due upon receipt of a bill or statement from the Commission.

4 *History Note:* Authority G.S. 143-291.1; 143-291.2; 143-300; 7A-305;

5 *Eff. January 1, 2013.*

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1 **4 NCAC 10B .0301 is proposed for amendment as follows:**

2 **SECTION .0300 - APPEALS TO FULL COMMISSION**

3 **4 NCAC 10B .0301 NOTICE OF APPEAL TO THE FULL COMMISSION SCOPE**

4 ~~A letter or other document expressing an intent to appeal, which is filed within 15 days of receipt of the Decision~~
5 ~~and Order of the Industrial Commission, and which clearly sets forth the Decision and Order from which appeal is~~
6 ~~taken, shall be considered notice of appeal to the Full Commission within the meaning of N.C.G.S. 143-292. Such~~
7 ~~notice shall include a written statement confirming service of a copy of the notice by mail or in person on the~~
8 ~~opposing party or parties.~~

9 The Rules in this Section are the applicable Rules for appeals of cases brought pursuant to Article 31 of Chapter 143 of
10 the General Statutes to the Full Commission.

11 *History Note:* Authority G.S. 143-300; 143-292;
12 *Eff.* January 1, 1989;
13 *Amended Eff.* January 1, 2013; May 1, 2000.

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1 **4 NCAC 10B .0302 is proposed for amendment as follows:**

2 **4 NCAC 10B .0302 TRANSCRIPTS NOTICE OF APPEAL TO THE FULL COMMISSION**

3 ~~Upon receipt of notice of appeal, the Industrial Commission, after taxing appropriate costs, will prepare and supply~~
4 ~~to all parties a transcript of the record of the case and decision from which appeal is being taken to the Full~~
5 ~~Commission.~~

6 A letter expressing an intent to appeal shall be considered notice of appeal to the Full Commission within the
7 meaning of G.S. 143-292, provided that the letter specifies the Order, Opinion and Award, or Decision and Order
8 from which appeal is taken.

9 *History Note:* *Authority* G.S. 143-300; 143-292;
10 *Eff.* January 1, 1989;
11 *Amended Eff.* January 1, 2013; May 1, 2000.

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1 **4 NCAC 10B .0303 is proposed for amendment as follows:**

2 **4 NCAC 10B .0303** ~~ASSIGNMENTS OF ERROR~~ **PROPOSED ISSUES ON APPEAL**

3 (a) The appellant shall, within 25 days of receipt of the transcript of the record, or receipt of notice that there will be
4 no transcript of the record, file ~~in triplicate~~ with the ~~Industrial Commission, Commission~~ a written statement of the
5 proposed issues that the appellant intends to present on appeal. The statement shall certify service ~~of a copy by mail~~
6 ~~or in person~~ upon the opposing party or parties. ~~The purpose of the proposed~~ Proposed issues on appeal ~~are~~ is to
7 facilitate the preparation of the record on appeal and ~~shall~~ does not limit the scope of the issues presented on appeal
8 in appellant's brief.

9 (b) Failure to file the proposed issues on appeal may result in the dismissal of the appeal either upon the motion of
10 the non-appealing party or upon the Full Commission's own motion.

11 *History Note:* Authority G.S. 143-300; 143-292; Dogwood Development and
12 Management Co., LLC v. White Oak Transport Co., Inc., 362 N.C. 191 (2008)
13 Eff. January 1, 1989;
14 Amended Eff. January 1, 2013; January 1, 2011; May 1, 2000.
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1 **4 NCAC 10B .0304 is proposed for amendment as follows:**

2 **4 NCAC 10B .0304 DISMISSALS OF APPEALS**

3 Failure to file assignments of error may result in the dismissal of the appeal either upon the Motion of the non-appealing
4 party or upon the Full Commission's own Motion.

5 *History Note:* Authority G.S. 143-300;

6 Eff. January 1, 1989;

7 Recodified from 4 NCAC 10B .0305 Eff. April 17, 2000;

8 Amended Eff. May 1, 2000;

9 Repealed Eff. January 1, 2013.

10

1 **4 NCAC 10B .0305 is proposed for amendment as follows:**

2 **4 NCAC 10B .0305 BRIEFS TO THE FULL COMMISSION**

3 ~~(a) Appellant's brief shall be filed with the Industrial Commission in triplicate no later than 25 days after receipt of~~
4 ~~the transcript of the record or receipt of notice that there will be no transcript.~~

5 ~~(b) Thereafter, appellee's brief shall be filed with the Industrial Commission in triplicate no later than 25 days after~~
6 ~~the service of appellant's brief. When an appellant fails to file a brief, appellee shall file his brief within 25 days~~
7 ~~after appellant's time for filing a brief has expired. If both parties appeal, they shall each file an appellant's and~~
8 ~~appellee's brief on the schedule set forth herein. The parties may file with the Docket Director a written stipulation~~
9 ~~to a single extension of time for each party, not to exceed 30 days, if the matter has not been calendared for hearing.~~

10 ~~(c) A party who fails to file a brief will not be allowed oral argument before the Full Commission. Cases should be~~
11 ~~cited by North Carolina Reports, and preferably, to Southeastern Reports. Counsel shall not discuss matters outside~~
12 ~~the record, assert personal opinions or relate personal experiences, or attribute unworthy acts or motives to opposing~~
13 ~~counsel.~~

14 ~~(d) Each brief filed pursuant to this Rule shall be accompanied by a written certification that the brief has been~~
15 ~~served by mail or in person upon the opposing party or parties.~~

16 (a) An appellant shall file a Form 44 *Application for Review* and brief in support of his grounds for review with the
17 Commission, with a certificate indicating service on the appellee, within 25 days after receipt of the transcript, or
18 receipt of notice that there will be no transcript. The appellee shall have 25 days from service of the appellant's
19 brief to file a reply brief with the Commission, with written statement of service on the appellant. When
20 the appellant fails to file a brief, the appellee shall file his brief within 25 days after the appellant's time for filing
21 brief has expired. A party who fails to file a brief shall not be allowed oral argument before the Full Commission.
22 If both parties appeal, they shall each file an appellant's and appellee's brief on the schedule set forth in this Rule. If
23 the matter has not been calendared for hearing, any party may file with the Docket Director a written stipulation to a
24 single extension of time not to exceed 15 days. In no event shall the cumulative extensions of time exceed 30 days.

25 (b) After request for review has been given to the Full Commission, any motions related to the issues for review
26 before the Full Commission shall be filed with the Full Commission, with service on the other parties. Motions
27 related to the issues for review including motions for new trial, to amend the record, or to take additional evidence,
28 filed during the pendency of a request for review to the Full Commission shall be argued before the Full
29 Commission at the time of the hearing of the request for review.

30 (c) Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North
31 Carolina Reporter, and when possible, to the Southeastern Reporter. Counsel shall not discuss matters outside the
32 record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing
33 counsel.

34 (d) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the
35 length of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared
36 with non-justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When a
37 party quotes or paraphrases testimony or other evidence from a transcript of the evidence or from an exhibit in the

1 party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony
2 or other evidence, a parenthetic entry that designates the source of the quoted or paraphrased material and the page
3 number location within the applicable source. The party shall use "T" for transcript, "Ex" for exhibit, and "p" for
4 page number. For example, (1) if a party quotes or paraphrases material located in the transcript on page 11, the
5 party shall use the following format "(T p 11)" and (2) if a party quotes or paraphrases material located in exhibit
6 three on page 12, the party shall use the following format "(Ex 3 p 12)". When a party quotes or paraphrases
7 testimony or other evidence in the transcript of a deposition in the party's brief, the party shall include, at the end of
8 the sentence in the brief that quotes or paraphrases the testimony or other evidence from the deposition, a parenthetic
9 entry that contains the name of the person deposed and the page number location within the transcript of the
10 deposition. For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of the
11 transcript of the deposition, the party shall use the following format "(Smith p 11)".

12 *History Note:* *Authority* G.S. 143-300; 143-296;
13 *Eff.* January 1, 1989;
14 *Recodified from* 4 NCAC 10B .0306 *Eff.* April 17, 2000;
15 *Amended Eff.* January 1, 2013; May 1, 2000.

1 **4 NCAC 10B .0306 is proposed for amendment as follows:**

2 **4 NCAC 10B .0306 MOTION FOR NEW HEARING**

3 ~~A Motion for a New Hearing must be filed in writing, and supported by Affidavit. Such Motions filed during the~~
4 ~~pendency of an appeal to the Full Commission shall be argued before the Full Commission at the time of the hearing of~~
5 ~~the appeal.~~

6 *History Note:* Authority G.S. 143-300; 143-292; 143-296;
7 *Eff.* January 1, 1989;
8 *Recodified from* 4 NCAC 10B .0310 *Eff.* April 17, 2000;
9 *Repealed Eff.* January 1, 2013; May 1, 2000.

10

1 **4 NCAC 10B .0308 is proposed for amendment as follows:**

2 **4 NCAC 10B .0308 STAYS**

3 When a case is appealed to the Full Commission, ~~or to the Court of Appeals~~, all ~~decisions and orders~~ orders, opinion and
4 awards, or decision and orders of a Deputy Commissioner ~~or the Full Commission~~ are stayed pending appeal.

5 *History Note:* Authority G.S. 143-300; 143-292; 143-296;

6 Eff. May 1, 2000;

7 Amended Eff. January 1, 2013.

8

1 **4 NCAC 10B .0309 is proposed for amendment as follows:**

2 **4 NCAC 10B .0309** **NEW EVIDENCE**

3 ~~No new evidence will be presented to, or heard by, the Full Commission unless the Commission in its discretion permits.~~

4 *History Note:* *Authority* G.S. 143-300;
5 *Eff.* January 1, 1989;
6 *Amended Eff.* May 1, 2000;
7 *Repealed Eff.* January 1, 2013.

8

1 **4 NCAC 10B .0310 is proposed for amendment as follows:**

2 **4 NCAC 10B .0310 WAIVER OF ORAL ARGUMENT**

3 ~~Either or both parties, with permission of the Full Commission, may waive oral argument before the Full Commission.~~
4 ~~The Full Commission may in its discretion order that all oral argument in a particular case will be waived. If oral~~
5 ~~argument is waived by either of these methods, the Full Commission will issue a decision, based on the record,~~
6 ~~assignments of error, and briefs.~~

7 Upon the request of a party or its own motion, the Commission may waive oral argument to prevent manifest
8 injustice, to promote judicial economy, or to expedite a decision in the public interest. In the event of such waiver,
9 the Full Commission shall file an award, based on the record and briefs.

10 *History Note:* Authority G.S. 143-300; 143-292; 143-296;
11 *Eff.* January 1, 1989;
12 *Recodified from* 4 NCAC 10B .0311 *Eff.* April 17, 2000;
13 *Amended Eff.* January 1, 2013; May 1, 2000.

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1 **4 NCAC 10B .0401 is proposed for amendment as follows:**

2 **SECTION .0400 - APPEALS TO THE COURT OF APPEALS**

3 **4 NCAC 10B .0401 RULES OF APPELLATE PROCEDURE SCOPE**

4 ~~Except as otherwise provided in N.C.G.S. 143-293, in every case appealed to the Court of Appeals, the North Carolina~~
5 ~~Rules of Appellate Procedure governing appeals in an ordinary civil action shall apply.~~

6 The Rules in this Section are the applicable Rules for appeals to the Court of Appeals pursuant to Article 31 of Chapter
7 143 of the General Statutes.

8 *History Note:* Authority G.S. 143-300; 143-293;

9 *Eff.* January 1, 1989;

10 *Amended Eff.* January 1, 2013.

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1 **4 NCAC 10B .0402 is proposed for amendment as follows:**

2 **4 NCAC 10B .0402** **APPEAL BOND STAYS**

3 ~~The amount of the appeal bond shall be set by the Chair of the Industrial Commission or the Chair's designee.~~

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

6 *History Note:* *Authority* G.S. 143-300; 143-292; 143-294; 143-296;

7 *Eff.* January 1, 1989;

8 *Amended Eff.* January 1, 2013; May 1, 2000.

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1 **4 NCAC 10B .0403 is proposed for amendment as follows:**

2 **4 NCAC 10B .0403** **MOTIONS FOR COURT OF APPEALS CASES**

3 (1) Prior to the docketing of the record on appeal in the Court of Appeals, All all motions filed by the parties regarding
4 an appeal to the Court of Appeals shall be addressed to and ruled upon by the Chair of the ~~Industrial~~ Commission, or the
5 Chair's designee.

6 (2) A motion to reconsider or to amend an award of the Full Commission shall be filed within 15 days of
7 receipt of notice of the award. An award of the Full Commission is not final until the disposition is filed by the
8 Commission on the pending motion to reconsider or to amend an award.

9 *History Note:* *Authority* G.S. 143-300; 143-293;
10 *Eff.* January 1, 1989;
11 *Amended Eff.* January 1, 2013; May 1, 2000.
12
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1 **4 NCAC 10B .0404 is proposed for amendment as follows:**

2 **4 NCAC 10B .0404** ~~Settling Record on Appeal~~ **REMAND FROM APPELLATE COURTS**

3 ~~Upon a proper motion, the Chair of the Industrial Commission, or the Chair's designee, shall enter an Order settling a~~
4 ~~record on appeal after conducting a settlement conference, in accordance with the North Carolina Rules of Appellate~~
5 ~~Procedure. Settlement conferences shall be held at the Industrial Commission offices or by telephone conference.~~

6 When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or
7 without a brief to the Full Commission, setting forth its position on the actions or proceedings, including evidentiary
8 hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of
9 the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission
10 decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored
11 the decision is no longer a member of the Commission.

12 *History Note:* *Authority* G.S. 143-300; 143-292; 143-296;

13 *Eff.* January 1, 1989;

14 *Amended Eff.* January 1, 2013; May 1, 2000.

15

1 4 NCAC 10B .0501 is proposed for amendment as follows:

2 SECTION .0500 – RULES OF THE COMMISSION

3 4 NCAC 10B .0501 ~~WAIVER OF RULES~~ SUSPENSION OF RULES

4 ~~In the interest of justice, any tort claims Rule may be waived by a Commissioner, Deputy Commissioner, or the Full~~
5 ~~Commission.~~

6 To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except
7 as otherwise provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the
8 Rules in this Subchapter in a case pending before the Commission upon application of a party or upon its own
9 initiative, and may order proceedings in accordance with its directions.

10 *History Note:* Authority G.S. 143-300; 143-291;
11 *Eff.* January 1, 1989;
12 *Amended Eff.* January 1, 2013; May 1, 2000.

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1 **4 NCAC 10B .0502 is proposed for amendment as follows:**

2 **4 NCAC 10B .0502** **RULEMAKING**

3 ~~Prior to adopting, deleting or amending any Tort Claims Rule of the Industrial Commission which affects the substantive~~
4 ~~rights of parties, the Industrial Commission will give at least 30 days notice of the proposed change in rules. Such notice~~
5 ~~will be given by publishing, in a newspaper or newspapers of general circulation in North Carolina, notice of such~~
6 ~~proposed change. Such notice will include an invitation to any interested party to submit in writing any objection,~~
7 ~~suggestion or other comment with respect to the proposed rule change or to appear before the Full Commission at a time~~
8 ~~and place designated in the notice for the purpose of being heard with respect to the proposed rule change.~~

9 *History Note:* *Authority* G.S. 143-300;
10 *Eff.* January 1, 1989;
11 *Repealed Eff.* January 1, 2013.

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1 **4 NCAC 10B .0503 is proposed for amendment as follows:**

2 **4 NCAC 10B .0503 SANCTIONS**

3 ~~Upon failure to comply with any of the aforementioned rules, the Industrial Commission may subject the violator to~~
4 ~~sanctions outlined in Rule 37 of the North Carolina Rules of Civil Procedure, including reasonable attorney fees to~~
5 ~~be taxed against the party or counsel whose conduct necessitates the order.~~

6 The Commission may, on its own initiative or motion of a party, impose a sanction against a party, or attorney or
7 both, when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this
8 Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the
9 North Carolina Rules of Civil Procedure.

10 *History Note:* Authority G.S. 143-300; 143-291; 143-296; 1A-1, Rule 37;
11 *Eff.* January 1, 2011;
12 *Amended Eff.* January 1, 2013.

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