

1 Rule 11 NCAC 23B .0101 is amended as published in 33:08 NCR 817 as follows:

2
3 **SUBCHAPTER 23B – TORT CLAIMS RULES**

4
5 **SECTION .0100 – ADMINISTRATION**

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7 **11 NCAC 23B .0101 LOCATION OF OFFICES MAIN OFFICE AND HOURS OF BUSINESS**

8 ~~For purposes of this Subchapter, the offices~~ The main office of the North Carolina Industrial Commission
9 ~~(Commission) are~~ is located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents
10 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.
11 only. Documents ~~related to tort claims are~~ permitted to be filed electronically may be so filed until 11:59 p.m. on the
12 required filing date.

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14 *History Note: Authority G.S. 143-291; 143-300;*
15 *Eff. January 1, 1989;*
16 *Amended Eff. July 1, 2014; May 1, 2000;*
17 *Recodified from 04 NCAC 10B .0101 Eff. June 1, 2018;*
18 *Amended Eff. March 1, 2019.*
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1 Rule 11 NCAC 23B .0102 is amended as published in 33:08 NCR 818 as follows:

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3 **11 NCAC 23B .0102 OFFICIAL FORMS**

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

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

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

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

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

16 *Eff. January 1, 1989;*

17 *Amended Eff. July 1, 2014; May 1, 2000;*

18 *Recodified from 04 NCAC 10B .0102 Eff. June 1, 2018;*

19 *Amended Eff. March 1, 2019.*

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1 Rule 11 NCAC 23B .0103 is amended as published in 33:08 NCR 818 as follows:

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3 **11 NCAC 23B .0103 FILING FEES**

4 (a) No tort claim shall be accepted for filing with the Commission unless the claim is 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 tort claim that 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 an affidavit sufficient to satisfy the provisions of G.S. 1-110,
10 stating that plaintiff is unable to comply with Paragraph (a) of this Rule.

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

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

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22 *History Note: Authority G.S. 143-291.2; 143-300;*
23 *Eff. January 1, 1989;*
24 *Amended Eff. July 1, 2014; May 1, 2000;*
25 *Recodified from 04 NCAC 10B .0103 Eff. June 1, 2018;*
26 *Amended Eff. March 1, 2019.*
27

1 Rule 11 NCAC 23B .0104 is amended as published in 33:08 NCR 818–19 as follows:

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3 **11 NCAC 23B .0104 ~~FILING BY FACSIMILE TRANSMISSION~~ ELECTRONIC FILINGS WITH THE**
4 **COMMISSION; HOW TO FILE**

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

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

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

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

19
20 Table 1: Forms and documents exempt from EDPF filing requirements and how to file them:

<u>DOCUMENT</u>	<u>QUALIFYING CONDITION(S)</u>	<u>HOW TO FILE</u>
<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,</u>

		<u>Raleigh, North Carolina 27699-1236.</u>
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(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 Subparagraph 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 EDFP 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. March 1, 2019.*

1 Rule 11 NCAC 23B .0105 is adopted as published in 33:08 NCR 819 as follows:

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3 **11 NCAC 23B .0105 CONTACT INFORMATION**

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

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

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

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

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18 *History Note: Authority G.S. §§ 143-291, 143-300;*

19 *Eff. March 1, 2019.*

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1 11 NCAC 23B .0202 is amended as published in 33:08 NCR 819–20 as follows:

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3 **11 NCAC 23B .0202 MEDICAL MALPRACTICE CLAIMS BY UNREPRESENTED PRISON**
4 **INMATES**

5 ~~(a) In any tort claim medical malpractice cases filed by or on behalf of an unrepresented prison inmates inmate where~~
6 ~~the plaintiff is alleging in which the Commission determines that the plaintiff is alleging that a health care provider~~
7 ~~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-~~
8 ~~21.12 90-21.12, and or the defendant has filed a Motion to Dismiss moved to dismiss the claim, claim for failure to~~
9 ~~comply with Rule 9(j) of the North Rules of Civil Procedure, all discovery is stayed until the following occur: a~~
10 ~~recorded non-evidentiary hearing before the Commission is held for the purpose of determining whether a claim for~~
11 ~~medical malpractice has been stated and, if so, whether:~~

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

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

15 (B)(a) ~~whether expert testimony is necessary for the plaintiff to prevail; and plaintiff must meet the~~
16 ~~requirements of Rule 9(j)(1) or (2) of the North Carolina Rules of Civil Procedure to proceed with~~
17 ~~the claim; and or~~

18 (b) ~~whether plaintiff has alleged facts establishing negligence under the existing common-law doctrine~~
19 ~~of res ipsa loquitur.~~

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

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

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

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

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

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

36 *Eff. January 1, 1989;*

37 *Recodified from 04 NCAC 10B .0206 Eff. April 17, 2000;*

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Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0202 Eff. June 1, 2018;
Amended Eff. March 1, 2019.

1 Rule 11 NCAC 23B .0203 is amended as published in 33:08 NCR 820 as follows:

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3 **11 NCAC 23B .0203 INFANTS AND INCOMPETENTS**

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

9 (b) The Commission may assess a fee to be paid to an attorney who serves as a guardian *ad litem* for actual services
10 rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent as part of the
11 costs.

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13 *History Note: Authority G.S. 143-291; 143-295; 143-300;*

14 *Eff. January 1, 1989;*

15 *Recodified from 04 NCAC 10B .0307 Eff. April 17, 2000;*

16 *Amended Eff. July 1, 2014; May 1, 2000;*

17 *Recodified from 04 NCAC 10B .0203 Eff. June 1, 2018;*

18 *Amended Eff. March 1, 2019.*

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1 Rule 11 NCAC 23B .0204 is amended as published in 33:08 NCR 820 as follows:

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3 **11 NCAC 23B .0204 MOTIONS**

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

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

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

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

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

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

22 ~~(g)~~ (g) 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 in the interests of justice or to
25 promote judicial economy.

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

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

1 failed to properly name the department or agency of the State with whom such person was employed, shall be ruled
2 upon following the completion of discovery.

3 (j) Motions to reconsider or amend an ~~order, opinion and award, Order or decision and order, Decision and Order,~~
4 made prior to giving notice of appeal to the Full Commission, shall be ~~directed~~ addressed to the Deputy Commissioner
5 who authored the ~~Opinion and Award, Order or Decision and Order.~~

6 (k) ~~Upon request of either party, or upon motion of the Commission, motions shall be set for hearing before a~~
7 ~~Commissioner or Deputy Commissioner.~~

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

10 *Eff. January 1, 1989;*

11 *Recodified from 04 NCAC 10B .0203 Eff. April 17, 2000;*

12 *Amended Eff. July 1, 2014; May 1, 2000;*

13 *Recodified from 04 NCAC 10B .0204 Eff. June 1, 2018;*

14 *Amended Eff. March 1, 2019.*

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1 Rule 11 NCAC 23B .0205 is amended as published in 33:08 NCR 820 as follows:

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3 **11 NCAC 23B .0205 MEDIATION (~~EFFECTIVE JULY 1, 2014~~)**

4 (a) ~~The parties to tort claims, by agreement or Order of the Commission, shall participate in mediation.~~ Any party
5 participating in mediation is bound by the Rules for Mediated Settlement and Neutral Evaluation Conferences of the
6 Commission found in 11 NCAC 23G, except to the extent the same conflict with the Tort Claims Act or the rules in
7 this Subchapter, in which case the Tort Claims Act and the rules in this Subchapter apply.

8 (b) An employee or agent of the named governmental entity or agency shall be available via telecommunication.
9 Mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named
10 governmental entity or agency.

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12 *History Note: Authority G.S. 143-295; 143-296; 143-300;*

13 *Eff. January 1, 1989;*

14 *Amended Eff. July 1, 2014; January 1, 2011; May 1, 2000;*

15 *Recodified from 04 NCAC 10B .0205 Eff. June 1, 2018;*

16 *Amended Eff. March 1, 2019.*

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1 11 NCAC 23B .0208 is amended as published in 33:08 NCR 820 as follows:

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3 **11 NCAC 23B .0208 HEARING COSTS**

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

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

8 *Eff. July 1, 2014;*

9 *Recodified from 04 NCAC 10B .0208 Eff. June 1, 2018;*

10 *Amended Eff. March 1, 2019.*

11

1 Rule 11 NCAC 23B .0302 is amended as published in 33:08 NCR 821 as follows:

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3 **11 NCAC 23B .0302 NOTICE OF APPEAL APPEALS TO THE FULL COMMISSION**

4 ~~(a) A letter expressing an intent to~~ Notice of appeal shall be considered notice of appeal to the Full ~~made to the~~
5 Commission within the meaning of G.S. 143-292, 15 days from the date when notice of the Deputy Commissioner's
6 Order or Decision and Order has been received. The notice of appeal shall specify, provided that the letter specifies
7 by tort claim number and filing date, the Order, Opinion and Award, Order or Decision and Order from which appeal
8 is taken. The notice of appeal shall include a written statement confirming that a copy of the notice of appeal has been
9 sent to the opposing party or parties.

10 (b) After receipt of the notice of appeal, the Commission shall acknowledge the notice of appeal in writing. Within
11 30 days of the acknowledgement, the Commission shall prepare and provide, at no charge to the parties, electronic
12 copies of any official transcript and exhibits, along with a Form T-44 *Application for Review*. In cases where it is not
13 possible to provide a party with the official transcript and exhibits electronically, the Commission shall provide the
14 official transcript and exhibits and a Form T-44 *Application for Review* via any class of U.S. mail that is fully prepaid.

15 (c) Within 25 days of receipt of the official transcript and exhibits, or receipt of notice that there will be no official
16 transcript and exhibits, the appellant shall submit a Form T-44 *Application for Review* or written statement stating
17 with particularity all assignments of error and grounds for review, including, where applicable, the pages in the
18 transcript or the record on which the alleged errors are recorded. The Form T-44 *Application for Review* or the written
19 statement shall include confirmation that a copy of the document has been sent to the opposing party or parties. Failure
20 to file the proposed issues on appeal, either by Form T-44 *Application for Review* or by written statement, may result
21 in the dismissal of the appeal either upon the motion of the non-appealing party or upon the Full Commission's own
22 motion.

23 (d) An appellant may file a brief in support of the grounds for appeal with the Commission, with a written statement
24 confirming that a copy of the brief has been sent to the opposing party or parties, within 25 days after receipt of the
25 official transcript and exhibits or receipt of notice that there will be no official transcript and exhibits. The appellee
26 shall have 25 days from service of the appellant's brief to file a reply brief with the Commission, with a written
27 statement confirming that a copy of the brief has been sent to the opposing party or parties. When the appellant fails
28 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
29 multiple parties appeal, each party may file an appellant's brief and appellee's brief on the schedule set forth in this
30 Rule. If the matter has not been calendared for hearing, any party may file a written stipulation to a single extension
31 of time not to exceed 15 days with the Office of the Clerk. In no event shall the cumulative extensions of time exceed
32 30 days. A party who fails to file a brief shall not be allowed oral argument before the Full Commission.

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

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

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

21
22 History Note: Authority G.S. 143-292; 143-300;
23 *Eff. January 1, 1989;*
24 *Amended Eff. July 1, 2014; May 1, 2000;*
25 *Recodified from 04 NCAC 10B .0302 Eff. June 1, 2018;*
26 *Amended Eff. March 1, 2019.*
27

1 11 NCAC 23B .0303 -.0305 are repealed as published in 33:08 NCR 821 as follows:

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3 **11 NCAC 23B .0303 PROPOSED ISSUES ON APPEAL**

4 **11 NCAC 23B .0305 BRIEFS TO THE FULL COMMISSION**

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6 *History Note: Authority G.S. §§ 143-292; 143-296; 143-300; 362 N.C. 191 (2008);*

7 *Repealed Eff. March 1, 2019.*

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1 Rule 11 NCAC 23B .0307 is amended as published in 33:08 NCR 821–22 as follows:

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3 **11 NCAC 23B .0307 MOTIONS BEFORE THE FULL COMMISSION**

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

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

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12 *History Note: Authority G.S. 143-296; 143-300;*
13 *Eff. January 1, 1989;*
14 *Recodified from 04 NCAC 10B .0308 effective April 17, 2000;*
15 *Amended Eff. July 1, 2014; May 1, 2000;*
16 *Recodified from 04 NCAC 10B .0307 Eff. June 1, 2018;*
17 *Amended Eff. March 1, 2019.*

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1 Rule 11 NCAC 23B .0308 is amended as published in 33:08 NCR 822as follows:

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3 **11 NCAC 23B .0308 STAYS**

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

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

8 *Eff. May 1, 2000;*

9 *Amended Eff. July 1, 2014;*

10 *Recodified from 04 NCAC 10B .0308 Eff. June 1, 2018;*

11 *Amended Eff. March 1, 2019.*

12

1 11 NCAC 23B .0310 is amended as published in 33:08 NCR 822 as follows:

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3 **11 NCAC 23B .0310 WAIVER OF ORAL ARGUMENT**

4 ~~Upon the request of a party or its own motion, the Commission may waive oral argument in the interests of justice or~~
5 ~~to promote judicial economy. In the event of such waiver, the Full Commission shall file an award, based on the~~
6 ~~record and briefs.~~

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

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

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

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

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

23
24
25 *History Note: Authority G.S. 143-292; 143-296; 143-300;*
26 *Eff. January 1, 1989;*
27 *Recodified from 04 NCAC 10B .0311 Eff. April 17, 2000;*
28 *Amended Eff. July 1, 2014; May 1, 2000;*
29 *Recodified from 04 NCAC 10B .0310 Eff. June 1, 2018;*
30 *Amended Eff. March 1, 2019.*
31

1 Rule 11 NCAC 23B .0402 is amended as published in 33:08 NCR 822 as follows:

2

3 **11 NCAC 23B .0402 STAYS**

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

6

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

8 *Eff. January 1, 1989;*

9 *Amended Eff. July 1, 2014; May 1, 2000;*

10 *Recodified from 04 NCAC 10B .0402 Eff. June 1, 2018;*

11 *Amended Eff. March 1, 2019.*

12

1 Rule 11 NCAC 23B .0501 is amended as published in 33:08 NCR 822 as follows:

2
3 **SECTION .0500 – RULES OF THE COMMISSION**
4

5 **11 NCAC 23B .0501 WAIVER OF RULES**

6 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the
7 rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case
8 pending before the Commission upon ~~written application~~ request of a party or upon its own initiative only if the
9 ~~employee plaintiff~~ is not represented by counsel. Factors the Commission shall use in determining whether to grant
10 the waiver are:

- 11 (1) the necessity of a waiver;
- 12 (2) the party's responsibility for the conditions creating the need for a waiver;
- 13 (3) the party's prior requests for a waiver;
- 14 (4) the precedential value of such a waiver;
- 15 (5) notice to and opposition by the opposing parties; and
- 16 (6) the harm to the party if the waiver is not granted.

17
18 *History Note: Authority G.S. 143-291; 143-300;*
19 *Eff. January 1, 1989;*
20 *Amended Eff. July 1, 2014; May 1, 2000;*
21 *Recodified from 04 NCAC 10B .0501 Eff. June 1, 2018;*
22 *Amended Eff. March 1, 2019.*
23

1 Rule 11 NCAC 23L .0105 is adopted as published in 33:08 NCR 822–24 as follows:

2
3 **11 NCAC 23L .0105 FORM T-42 – APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM**

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

7
8 North Carolina Industrial Commission

9 IC File # T-_____

10 APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM

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

12
13 _____ Plaintiff(s) v. _____ Defendant(s)

14
15 TO THE NORTH CAROLINA INDUSTRIAL COMMISSION:

16
17 The undersigned _____ respectfully shows unto the North Carolina Industrial Commission that _____ is
18 an _____ infant or _____ incompetent without general or testamentary guardian in this State, and that by reason thereof can
19 bring an action only by a guardian ad litem; that the infant or incompetent has a cause of action against the defendants
20 on account of the following matter and things:

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

24
25 Wherefore, the undersigned prays the Commission that a fit and proper person be appointed Guardian Ad Litem for
26 the infant or incompetent for the purpose of bringing on his or her behalf an action as above set out.

27 Signature of Applicant _____ Date _____

28
29 (Please complete page 2 of form)

30
31 ORDER APPOINTING GUARDIAN AD LITEM

32
33 It appearing to the North Carolina Industrial Commission from the above application that _____ is
34 an _____ infant or _____ incompetent having no general or testamentary guardian within this State and that said infant or
35 incompetent appears to have a good cause of action against the defendant(s); and it further appearing to the
36 Commission after due inquiry that _____ is a fit and proper person to be appointed guardian ad
37 litem for the infant or incompetent for the purpose of bringing this action on his or her behalf;

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

3
4 This _____ day of _____.

5
6 Commissioner or Deputy Commissioner _____

7
8 PLEASE TYPE OR PRINT:

9
10 Full name and address of minor or incompetent:
11 _____

12 Birth date of minor: _____

13 Full name and address of proposed guardian ad litem:
14 _____

15
16 IMPORTANT INFORMATION FOR PARTIES

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

18
19 11 NCAC 23B .0203 INFANTS AND INCOMPETENTS

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

25 (b) The Commission may assess a fee to be paid to an attorney who serves as a guardian ad litem for actual services
26 rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent as part of the
27 costs.

28
29 SEND TO: _____
30 dockets@ic.nc.gov
31 Office of the Clerk
32 1236 Mail Service Center
33 Raleigh, NC 27699-1236
34 Main telephone: (919) 807-2500
35 Helpline (800) 688-8349
36 Website: <http://www.ic.nc.gov>

37

1 FORM T-42

2

3 (b) A copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/formt42.pdf>.

4 The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/formt42.pdf> and may not be
5 altered or amended in any way.

6

7 *History Note: Authority G.S. 143-291; 143-295; 143-300;*

8 *Eff. March 1, 2019.*

9

10

11

12