

SUBCHAPTER 23B – TORT CLAIMS RULES

SECTION .0100 – ADMINISTRATION

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

The main office of the North Carolina Industrial Commission 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 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. March 1, 2019.*

11 NCAC 23B .0102 OFFICIAL FORMS

(a) Copies of the Commission's rules and forms regarding tort claims may be obtained by contacting the Commission in person at the address in Rule .0101 of this Section; by written request mailed to 1236 Mail Service Center, Raleigh, NC 27699-1236, Attn.: Office of the Clerk; or from the Commission's 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 parties may reproduce current Commission forms for their own use, provided:

- (1) no statement, question, or information blank contained on the Commission form is omitted from the substituted form; and
- (2) the substituted form is identical in size and format 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. March 1, 2019.*

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 the fee assessed under this Rule, an Order shall be issued directing payment of that fee, and the plaintiff shall, within 30 days from receipt of the Order, forward to the Commission an attorney's check, certified check, money order, or electronic 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 shall determine whether the inmate's tort claim is frivolous and whether to dismiss the claim, pursuant to G.S. 1-110. Appeals from the dismissal of a frivolous tort claim pursuant to G.S. 1-110 shall proceed directly to the Full Commission and shall be decided without oral argument.

*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. March 1, 2019.*

11 NCAC 23B .0104 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

(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") or by sending the documents to the Clerk of the Industrial Commission via electronic mail (dockets@ic.nc.gov), facsimile, U.S. Mail, private courier service, or hand delivery.

(b) Information regarding how to 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) 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 if 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.

(d) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDFP, U.S. Mail, hand delivery, or any other means allowed by the Rules of Appellate Procedure or applicable statutes governing appeals from the General Courts of Justice. Notwithstanding the foregoing, plaintiffs without legal representation may file all documents with the Commission as provided in Paragraph (a) of this Rule.

History Note: Authority G.S. 143-291; 143-293; 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, 2021; March 1, 2019.

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 who have matters pending before the Commission shall inform the Commission of any change in contact information by filing a written notice via the Commission's Electronic Document Filing Portal ("EDFP"), email to contactinfo@ic.nc.gov, facsimile to (919) 715-0282, U.S. mail sent to Office of the Clerk, 1236 Mail Service Center, Raleigh North Carolina 27699-1236, private courier service in accordance with Rule .0101 of this Section, or hand delivery in accordance with Rule .0101 of this Section.

(c) A 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 inform the Commission of all changes in contact information in accordance with Paragraph (b) of this Rule.

(d) All attorneys of record with matters before the Commission shall provide and maintain current contact information for the Commission's records via EDFP.

(e) Instructions on how to provide and update contact information via EDFP are available at <https://www.ic.nc.gov/docfiling.html>.

History Note: Authority G.S. 143-291; 143-300;
Eff. March 1, 2019;
Amended Eff. March 1, 2021.

11 NCAC 23B .0106 NOTICE BY THE COMMISSION

(a) If service is provided by electronic mail, "receipt of such notice" pursuant to G.S. 143-292 and "receipt of the decision and order" of the Full Commission pursuant to G.S. 143-293 is complete one hour after it is sent by the Commission, provided that:

- (1) notice sent after 5:00 p.m. shall be complete at 8:00 a.m. the following State business day; and

- (2) notice sent by electronic mail that is not readable by the recipient is not complete. Within five State business days of receipt of an unreadable document, the receiving party shall notify the Commission of the unreadability of the document.
- (b) If service is provided by electronic mail, notice of orders or other documents issued pursuant to G.S. 143-296 is complete in accordance with the same provisions set forth in Paragraph (a) of this Rule.

History Note: Authority G.S. 143-300;
Eff. December 1, 2020.

SECTION .0200 - CLAIMS PROCEDURES

11 NCAC 23B .0201 RULES OF CIVIL PROCEDURE

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Amended Eff. January 1, 2011; May 1, 2000;
Repealed Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0201 Eff. June 1, 2018.

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

In any tort claim filed by an unrepresented prison inmate in which the Commission determines that the plaintiff is alleging that a health care provider, as defined in G.S. 90-21.11, failed to comply with the applicable standard of care set forth in G.S. 90-21.12, or the defendant has moved to dismiss the claim for failure to comply with Rule 9(j) of the North Rules of Civil Procedure, all discovery shall be stayed until 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) the 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) the plaintiff has alleged facts establishing negligence under the existing common-law doctrine of *res ipsa loquitur*.

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 ordered by the Commission. The plaintiff shall have one hundred and twenty (120) days following receipt of the medical records 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. March 1, 2019.

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 guardian ad litem if it is 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 assessed pursuant to G.S. 143-291.2(a) or Rule 17(b)(2) of the North Carolina Rules of Civil Procedure.

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. March 1, 2019.

11 NCAC 23B .0204 MOTIONS

- (a) All motions regarding tort claims shall be filed pursuant to Rule .0104 of this Subchapter.
- (b) A motion shall state the grounds on which it is based with particularity, the relief sought, and the opposing party's position, or that the opposing party's position could not be ascertained after a good faith effort.
- (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.
- (d) All motions and responses thereto filed electronically shall include a proposed Order in Microsoft Word format.
- (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.
- (f) Motions to continue or remove a case from the hearing docket shall be made as much in advance 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 shall state the position of the other parties regarding the motion. Oral motions shall be permitted in emergency situations.
- (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.
- (h) Notwithstanding Paragraph (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. Motions shall be determined without oral argument, unless the Commission orders otherwise in the interests of justice.
- (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 or Decision and Order, made prior to giving notice of appeal to the Full Commission, shall be addressed to the Deputy Commissioner who authored the Order or Decision and Order.

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. March 1, 2019.

11 NCAC 23B .0205 MEDIATION

- (a) Any party participating in mediation shall be bound by the Rules for Mediated Settlement and Neutral Evaluation Conferences of the Commission, found in 11 NCAC 23G, except to the extent these Rules conflict with the Tort Claims Act or the other rules in this Subchapter, in which case the Tort Claims Act and the other rules in this Subchapter shall apply.
- (b) An employee or agent of the named governmental entity or agency shall either physically attend or 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. March 1, 2019.

11 NCAC 23B .0206 HEARINGS

- (a) The Commission may, on its own motion, order a hearing, rehearing, or pre-trial conference of any tort claim in dispute. The Commission shall set the date, time, and location of the hearing, and provide notice of the hearing to

the parties. Any pre-trial conference, as well as hearings of claims in which the plaintiff is incarcerated at the time of the hearing, may be conducted via videoconference or telephone conference in lieu of an in-person hearing. Where a party has not notified the Commission of the attorney representing the party prior to the mailing of calendars for hearing, notice to that party constitutes notice to the party's attorney. Any scheduled hearings shall proceed to completion unless recessed, continued, or removed by Order of the Commission, and shall not be limited by the business hours of the Commission as set forth in Rule .0101 of this Subchapter.

(b) When an attorney is notified to appear for a pre-trial conference, motion hearing, hearing, or any other appearance the attorney shall, consistent with the North Carolina Rules of Professional Conduct, appear or have a partner, associate, or other attorney appear. Counsel for each party or any party without legal representation shall remain in the hearing room throughout the course of the hearing, unless excused by the Commission.

(c) A motion for a continuance shall be allowed by the Commissioner or Deputy Commissioner before whom the case is set in the interests of justice or to promote judicial economy.

(d) In cases involving property damage of less than five hundred dollars (\$500.00), the Commission may, upon its own motion or upon the motion of either party, order a videoconference or telephone conference hearing on the matter.

(e) Unless otherwise ordered by the Commission, in the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or delayed and rescheduled when the proceedings before the General Courts of Justice in that county are cancelled or delayed.

(f) Unless otherwise ordered or waived by the Commission, applications for issuance of a writ of habeas corpus ad testificandum requesting the appearance of witnesses incarcerated by the North Carolina Division of Adult Corrections, shall be filed with the Commission with a copy to the opposing party or counsel, for review by the Commission in accordance with G.S. 143-296.

History Note: Authority G.S. 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0202 Eff. April 17, 2000;
Amended Eff. July 1, 2014; January 1, 2011; May 1, 2000;
Recodified from 04 NCAC 10B .0206 Eff. June 1, 2018;
Amended Eff. March 21, 2019.

11 NCAC 23B .0207 HEARINGS OF CLAIMS BY PRISON INMATES

History Note: Authority G.S. 97-101.1; 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0204 Eff. April 17, 2000;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0207 Eff. June 1, 2018;
Repealed Eff. March 21, 2019.

11 NCAC 23B .0208 HEARING COSTS

Costs assessed pursuant to Rule 11 NCAC 23E .0202 in tort claims shall be 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. March 1, 2019.

SECTION .0300 - APPEALS TO FULL COMMISSION

11 NCAC 23B .0301 SCOPE

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

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 .0301 Eff. June 1, 2018.*

11 NCAC 23B .0302 APPEALS TO THE FULL COMMISSION

(a) Notice of appeal shall be made to the Commission within 15 days from the date when notice of the Deputy Commissioner's Order or Decision and Order has been received by the appellant. The notice of appeal shall specify, by tort claim number and filing date, the 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, any exhibits, and 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, all 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 be accompanied by confirmation that a copy of the document has been sent to the opposing party or parties. Failure to state the proposed issues on appeal, either by Form T-44 Application for Review or by written statement, shall be grounds for 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. If 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. The cumulative extensions of time shall not exceed 30 days. A party who fails to file a brief shall not be allowed oral argument before the Full Commission.

(e) 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. If 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)". If 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 in 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)". Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter and, if possible, to the South Eastern Reporter. Briefs shall be based upon the record in the matter, pursuant to G.S. 143-292.

(g) A 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 shall 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. March 1, 2019.

11 NCAC 23B .0303 PROPOSED ISSUES ON APPEAL

History Note: Authority G.S. 143-292; 143-300; 362 N.C. 191 (2008);
Eff. January 1, 1989;
Amended Eff. July 1, 2014; January 1, 2011; May 1, 2000;
Recodified from 04 NCAC 10B .0303 Eff. June 1, 2018;
Repealed Eff. March 1, 2019.

11 NCAC 23B .0304 DISMISSALS OF APPEALS

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0305 Eff. April 17, 2000;
Amended Eff. May 1, 2000;
Repealed Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0304 Eff. June 1, 2018.

11 NCAC 23B .0305 BRIEFS TO THE FULL COMMISSION

History Note: Authority G.S. 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0306 Eff. April 17, 2000;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0305 Eff. June 1, 2018;
Repealed Eff. March 1, 2019.

11 NCAC 23B .0306 MOTION FOR NEW HEARING

History Note: Authority G.S. 143-292; 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 04 NCAC 10B .0310 Eff. April 17, 2000;
Amended Eff. May 1, 2000;
Repealed Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0306 Eff. June 1, 2018.

11 NCAC 23B .0307 MOTIONS BEFORE THE FULL COMMISSION

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

(b) Motions related to the issues 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. March 1, 2019.

11 NCAC 23B .0308 STAYS

If a case is appealed to the Full Commission, all Orders or Decision and Orders of a Deputy Commissioner shall be 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. March 1, 2019.

11 NCAC 23B .0309 NEW EVIDENCE

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Repealed Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0309 Eff. June 1, 2018.

11 NCAC 23B .0310 ORAL ARGUMENT

(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 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 shall also have 20 minutes to present oral argument, unless otherwise specified by Order of the Commission; however, the appellees shall not reserve rebuttal time. In cross-appeals, each appealing party may reserve rebuttal time.

(c) A party may request additional time to present oral argument in excess of the standard 20-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 reasons for the request of additional time and the amount of additional time requested.

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

(e) Oral arguments shall be based upon the record in the matter, pursuant to G.S. 143-292.

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. March 1, 2019.

SECTION .0400 - APPEALS TO THE COURT OF APPEALS

11 NCAC 23B .0401 SCOPE

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

History Note: Authority G.S. 143-293; 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0401 Eff. June 1, 2018.

11 NCAC 23B .0402 STAYS

If a case is appealed to the Court of Appeals, all Orders or Decision and Orders of the Full Commission shall be 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. March 1, 2019.

11 NCAC 23B .0403 MOTIONS FOR COURT OF APPEALS CASES

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

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

History Note: Authority G.S. 143-293; 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0403 Eff. June 1, 2018.

11 NCAC 23B .0404 REMAND FROM APPELLATE COURTS

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

History Note: Authority G.S. 143-292; 143-296; 143-300;
Eff. January 1, 1989;
Amended Eff. July 1, 2014; May 1, 2000;
Recodified from 04 NCAC 10B .0404 Eff. June 1, 2018.

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 request of a party or upon its own initiative only if the 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. March 1, 2019.

11 NCAC 23B .0502 RULEMAKING

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Repealed Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0502 Eff. June 1, 2018.

11 NCAC 23B .0503 SANCTIONS

The Commission may, on its own initiative or motion of a party, impose a sanction against a party, or attorney, or both, when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this Subchapter, an Order of the Commission, the North Carolina Rules of Civil Procedure, and North Carolina Rules of Professional Conduct, or other applicable law.

History Note: Authority G.S. 1A-1, Rule 11 and Rule 37; 143-291; 143-296; 143-300;
Eff. January 1, 2011;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10B .0503 Eff. June 1, 2018;
Amended Eff. March 21, 2019.