

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.*