

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**

6
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.

13
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.*
19

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0102

DEADLINE FOR RECEIPT: Wednesday, February 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 4 – replace “can” with “may”

Line 5 – replace “Section,” with “Section;” (replace the comma with a semicolon)

Line 6 – replace “Clerk,” with “Clerk;” (replace the comma with a semicolon)

Lines 9-10 – replace “, provided” with “if”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

1 Rule 11 NCAC 23B .0102 is amended as published in 33:08 NCR 818 as follows:

2
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.

14
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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0103

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 16 – replace “may” with “shall”

Line 16 – replace “that” with “whether”

Line 17 – add “whether to” before “dismiss”

Line 17 – add a comma after “claim”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

2
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.~~

21
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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0104

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Please provide copies of this Rule with line numbers.

Paragraph (a), 4th line – delete the quotation marks

Paragraph (c), 1st line – replace “provided” with “if” or add “that” after “provided”

Page 2, Paragraph (d), 1st line – replace “that” with “who”

Page 2, Paragraph (d), 5th line – replace “Subparagraph” with “Paragraph”

Page 2, Paragraph (3), 2nd line – replace “when” with “if”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

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

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

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

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

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

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

<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 EDPF or U.S. Mail.

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

Eff. May 1, 2000;

Amended Eff. July 1, 2014;

Recodified from 04 NCAC 10B .0104 Eff. June 1, 2018;

Amended Eff. March 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0105

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 6 – replace “with” with “who have”

Line 9 – replace “Any” with “A”

Line 14 – replace “any change” with “all changes” if that is what is meant.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

1 Rule 11 NCAC 23B .0105 is adopted as published in 33:08 NCR 819 as follows:
2

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.
16
17

18 *History Note: Authority G.S. §§ 143-291, 143-300;*
19 *Eff. March 1, 2019.*
20

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0202

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 7 – replace “under” with “set forth in”

Line 9 – replace “is” with “shall be”

Lines 15 and 18 – add “the” before “plaintiff”

Line 25 – delete the comma

Line 27 – cite the rule that governs the Commission’s prescription of a time in which to produce medical records.

Lines 27-29 – consider revising as follows:

The plaintiff shall comply with Rule 9(j) of the North Carolina Rules of Civil Procedure within one hundred and twenty (120) days of receipt of the medical records.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

2
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 ~~(c) 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.~~

34
35 *History Note: Authority G.S. 143-300;*

36 *Eff. January 1, 1989;*

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

1 *Amended Eff. July 1, 2014; May 1, 2000;*
2 *Recodified from 04 NCAC 10B .0202 Eff. June 1, 2018;*
3 *Amended Eff. March 1, 2019.*
4

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0203

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 4 – delete the comma after “incompetent”

Line 6 – what does “fit and proper person” mean? Is this a statutory term, a defined term, or a term or art?

Line 6 – delete the coma

Line 6 – replace “if the Commission determines it to be” with “it is”

Line 11 – add “assessed pursuant to Rule .0203 of this Subchapter” after “costs” if this is accurate.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

2
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.

12
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.*
19

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0204

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 12 – delete both commas

Line 14 – delete “to be considered by the Commission”

Line 15 – delete the comma after “parties”

Line 20 – replace “relate” with “shall state”

Line 20 – replace “are” with “shall be”

Lines 24-25 – delete the entire sentence that begins “The Commission may...” Paragraph (e) already addresses this issue.

Line 36 – add a comma after “employee”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

11 NCAC 23B .0204 MOTIONS

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

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

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

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

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

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

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

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

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

(i) Motions to dismiss or for summary judgment filed by the defendant on the ground that plaintiff has failed to name the individual officer, agent, employee or involuntary servant whose alleged negligence gave rise to the claim, or has

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.~~

8
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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REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0205

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 5 – replace “is” with “shall be”

Line 6 – add a comma after “Commission”

Line 6 – replace “the same” with “these rules”

Line 6 – add “other” before “rules in”

Line 7 – add “other” before “rules in”

Line 7 – add “shall” before “apply”

Line 8 – do you mean that such an employee or agent can participate only by phone, and not in person? That is what this Paragraph seems to say.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

2
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.

11
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.*
17

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0208

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 4 – replace “are” with “shall be”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

11 NCAC 23B .0208

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

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

Eff. July 1, 2014;

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

Amended Eff. March 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0302

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 6 – add “by the appellant” after “received” if that is what is meant.

Line 10 – when after receiving the notice shall the Commission acknowledge that notice? Within x business days, perhaps?

Line 12 – revise as follows: “copies of the official transcript, all exhibits, and a Form T-44...”

Line 14 – revise as follows: “official transcript, all exhibits, and a Form T-44...”

Line 16 – delete the comma

Line 20 – replace “include confirmation” with “confirm”

Line 21 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances will determine whether an appeal will be dismissed?

Line 27 – delete the comma

Line 28 – replace “When” with “If”

Line 32 – delete “In no event shall”

Line 33 – add “shall” before “exceed”

Line 35 – move the comma to after “and”

Line 35 – replace “when” with “if”

Lines 35-37 – what is your statutory authority for this general limitation on what counsel is permitted to discuss? What discussion is limited by this sentence – discussion in briefs, oral discussions, prose in exhibits or attachments?

Jason Thomas
Commission Counsel

Date submitted to agency: Wednesday, January 30, 2019

Page 2, line 4 – replace “When” with “If”

Page 2, line 7 – add a comma: “(T 11),”

Page 2, line 9 – replace “When” with “If”

Page 2, line 11 – replace “location within” with “in”

Page 2, line 12 – delete the comma

Page 2, line 14 – replace “Any” with “A”

Page 2, line 18 – replace “will” with “shall”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

2
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
15 prepaid.

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

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

34 (e) Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North
35 Carolina Reporter, and when possible, to the South Eastern Reporter. Counsel shall not discuss matters outside the
36 record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing
37 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 parenthetic 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 parenthetic 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
17 order contains a certification that there is no just reason for delay, the request for review shall be referred directly to
18 a panel of the Full Commission. If the order contains no certification, requests for review will be referred to the
19 Chair of the Commission for a determination regarding the right to immediate review, and the parties shall address
20 the grounds 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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0303 and .0305

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Because these two rules are not consecutive, then may not be printed on a single page. However, they may share a single Submission for Permanent Rule form. Please provide one electronic and three hard copies of each rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

2

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

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

5

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

7 *Repealed Eff. March 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0307

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 4 – replace “any” with “all”

Line 5 – delete the comma

Line 6 – replace “must” with “shall”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

2
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.

11
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.*
18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0308

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 4 – replace “When” with “If”

Line 5 – replace “are” with “shall be”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

11 NCAC 23B .0308 STAYS

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

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

Eff. May 1, 2000;

Amended Eff. July 1, 2014;

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

Amended Eff. March 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0310

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 9 – replace “appellant(s)” with “appellant”

Line 11 – replace “appellee(s)” with “appellee”

Line 12 – replace “appellee(s)” with “appellees”

Line 12 – replace “may” with “shall”

Line 12 – delete “the case of”

Line 14 – replace “Any” with “A”

Line 16 – replace “reason(s)” with “reasons”

Line 18 – replace “any” with “a”

Line 18 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances will determine whether the Commission will disallow oral argument?

Line 119 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances will determine whether the Commission will decide the case on the record and briefs? On what basis might the Commission order otherwise?

Lines 21-22 – what is your statutory authority for this general limitation on what counsel is permitted to discuss? What discussion is limited by this sentence – discussion in briefs, oral discussions, prose in exhibits or attachments?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel

Date submitted to agency: Wednesday, January 30, 2019

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

2
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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0402

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 4 – replace “When” with “If”

Line 5 – replace “are” with “shall be”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23L .0105

DEADLINE FOR RECEIPT: Tuesday, February 12, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 6 – replace “7-42” with “T-42” if that is what is meant.

Lines 9-Page 3, line 1 – do intend for Form T-42 to look exactly like the text in these lines?

Page 3, line 6 – replace “may” with “shall” twice

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Wednesday, January 30, 2019

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

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

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

North Carolina Industrial Commission

IC File # T-

APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM

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

Plaintiff(s) v. Defendant(s)

TO THE NORTH CAROLINA INDUSTRIAL COMMISSION:

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

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

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

Signature of Applicant _____ Date _____

(Please complete page 2 of form)

ORDER APPOINTING GUARDIAN AD LITEM

It appearing to the North Carolina Industrial Commission from the above application that _____
is an __ infant or __ incompetent having no general or testamentary guardian within this State and that said infant or
incompetent appears to have a good cause of action against the defendant(s); and it further appearing to the

Commission after due inquiry that _____ is a fit and proper person to be appointed guardian ad litem for the infant or incompetent for the purpose of bringing this action on his or her behalf;

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

This _____ day of _____.

Commissioner or Deputy Commissioner _____

PLEASE TYPE OR PRINT:

Full name and address of minor or incompetent:

Birth date of minor: _____

Full name and address of proposed guardian ad litem:

IMPORTANT INFORMATION FOR PARTIES

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

11 NCAC 23B .0203 INFANTS AND INCOMPETENTS

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

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

SEND TO: _____

dockets@ic.nc.gov

Office of the Clerk

1236 Mail Service Center

Raleigh, NC 27699-1236

Main telephone: (919) 807-2500

Helpline (800) 688-8349

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

FORM T-42

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

History Note: Authority G.S. 143-291; 143-295; 143-300;
Eff. March 1, 2019.