

Regulatory Impact Analysis
Electronic Filings with the Commission; How to File

Agency: North Carolina Industrial Commission
Contact: Ashley Snyder – (919) 807-2524
Proposed New Rule Title:
Rules proposed for amendment: Rule 11 NCAC 23B .0104
(See proposed rule text in Appendix 1)

State Impact: Yes
Local Impact: Yes
Private Impact: Yes
Substantial Economic Impact: No

Statutory Authority: G.S. §§ 143-291; 143-291.2; 143-297; 143-300

Introduction/Background:

The Industrial Commission’s Rule 11 NCAC 23A .0108 requiring electronic filing of documents in most circumstances except by individuals without counsel went into effect on February 1, 2016. A revision went into effect in February 2017 to reflect changes to the Commission’s ability to accept more document types via EDFP. Since February 2017, the Commission has been able to accept via EDFP most tort filings, however, unlike in workers’ compensation cases, there has been no requirement that tort filings be submitted via EDFP.

The success of EDFP in workers’ compensation cases is largely due to the Commission’s rule requiring the use of EDFP for most filings. The Commission now receives approximately 30,000 documents via EDFP every month, the great majority of which are workers’ compensation documents filed pursuant to Rule 11 NCAC 23A .0108. During fiscal year 2017-2018, 15,359 documents were filed in state tort cases with the Commission. Of these, only 651 were filed via EDFP. The Commission currently accepts filings in tort cases via email, facsimile, hand delivery, and U.S. Mail.

Proposed Rule Amendments and Their Estimated Impact:

The proposed rule amendments include the following:

1. *Amendment of Rule 11 NCAC 23B .0104 entitled “Filing by Facsimile Transmission” to become a comprehensive filing rule titled “Electronic Filings with the Commission; How to File”*

This rule will mandate and describe requirements for using EDFP for all state tort claim-related documents filed with the Commission. The proposed rule exempts parties without legal representation from the electronic filing requirement and provides different filing instructions where no Commission file number has been

assigned. The rule also will allow any attorney a one-year waiver due to a lack of internet technology resources upon filing with the Industrial Commission's Clerk's Office a notification outlining the attorney's plan for coming into compliance within the one-year period. The Rule also will allow anyone to request an emergency temporary waiver of the electronic filing requirement because of temporary technical problems.

a. Description of baseline situation:

Currently, documents in tort cases filed with the Commission are filed via email, facsimile, hand-delivery, U.S. Mail, and EDFP. In fiscal year 2017-2018, 15,359 documents were filed with the Commission in state tort cases. Of those, 14,708 were filed in some way other than EDFP. Of the 197 cases that were not filed by inmates during fiscal year 2017-2018, 125 of those cases listed a plaintiff's counsel. Most filings in cases where the plaintiff is not represented by counsel are filed via U.S. Mail. Of the 678 tort claims filed in fiscal year 2017-2018, 481 were filed by inmates. Although the Commission is not currently able to count the number of open inmate tort claims where the plaintiff is represented by counsel, it is estimated that the number is less than ten. The only means for filing documents available to unrepresented inmates is U.S. Mail. In all state tort claims, the defendant agency is represented by an attorney, usually from the Attorney General's Office.

(1) Baseline use of filing methods other than EDFP:

Filing documents with the Commission by electronic mail involves addressing an e-mail to the correct e-mail address and attaching the documents to be filed by clicking and dragging them to the electronic mail or browsing and selecting them. This filing method requires that documents be created electronically or that electronic copies of paper documents be created in order to be attached. Faxes received by the Commission are similar in that the documents are emailed to the intended Commission staff and then the documents are saved to the desktop and uploaded into the file.

While electronic mail is preferred over paper filings, moving documents from e-mails to the Commission's electronic claim file system is cumbersome and creates opportunities for misfiling. Each attachment to an e-mail must be dragged to the staff member's computer "desktop" and then uploaded to the electronic file using a browse and select method. An alternative method is to drag all the documents to the "desktop" then combine them into one .pdf which is then uploaded using a browse and select method. The staff member must also choose the document type from a drop-down menu and click to confirm and submit.

U.S. Mail and hand delivery of documents requires Commission staff to date-stamp documents, return date-stamped copies to the sender, and scan the documents into the file using the method above. The Commission does not keep separate statistics for how documents in tort claims are filed, but

documents that are manually uploaded whether they are delivered by email, U.S. Mail, facsimile or by courier account for 95% percent of the documents received in tort files.

(2) EDFP baseline use:

EDFP requires users to register and receive an NCID. Users must review brief training materials regarding how to use EDFP. Documents are uploaded to EDFP using the file number of the claim and a browse and select function for each document to be uploaded. For each document uploaded, the user must select the document type from a drop-down menu. To complete the upload, the user must review and click to confirm and submit. The user receives a receipt confirming the upload via e-mail.

On the Commission side, staff members process documents submitted via EDFP by confirming the correct file number and party names; one or more of the documents in a particular filing may also be opened and viewed to confirm that the correct document types were used. Thereafter, the staff member clicks “Process Documents” and the documents appear in the electronic file. This procedure greatly reduces the time spent moving electronic documents around to get them into the correct claim file.

EDFP is currently required for the filing of almost all documents in workers’ compensation cases where an IC file number has been assigned. EDFP is currently available for all tort filings where an IC file number has been assigned, however it is not required for any tort filings. Currently, approximately 5% of filings received in tort cases are filed via EDFP.

b. Economic Impact:

(1) Costs to State through the Commission:

The Commission does not anticipate any significant costs related to the proposed rule change. The work performed by Commission staff related to planning and programming EDFP document types for tort cases was included in the cost of building out EDFP in the September 12, 2016 11 NCAC 23A .0609A fiscal note that accompanied the second phase rule effective February 1, 2017.

There will be an initial increase in calls or emails from external users to confirm the rule change. There may also be a brief period during which some external users fail to comply with the new rule and the Commission must correspond with them to reject the incorrect filings and inform them of the change. However, this is likely to occur in a relatively small number of cases for only a few weeks and the corrective action by the Commission will take a matter of 1-3 minutes per case. Therefore, the Commission expects minimal cost impact from the change.

(2) Costs to the State as an employer:

While it is unlikely that the State as an employer will have to expend additional funds to be able to comply with the technological aspects of the proposed rule changes, State employees such as attorneys and paralegals representing the State will file documents via EDFP under this rule. Similarly, any local government will be required to fill documents according to this Rule. State employees already have NCID credentials and will only have to obtain access to EDFP to use the system. The time it takes to use EDFP for filing vs. other means isn't calculable, as the Commission doesn't track the method used for filing documents in state tort claims other than EDFP; EDFP takes approximately 1 -2 minutes longer than email or desktop faxing but U.S. Mail takes 3-4 minutes longer than EDFP. Filing by hand delivery adds approximately ten minutes as the walk between the NC Industrial Commission and the Attorney General's Office is ten minutes. It is noted that couriers usually bring more than one document for filing on a trip to the Industrial Commission.

For those items currently filed via email, the additional time will result in an opportunity cost. The other filing methods described above take longer than filing via EDFP and will therefore result in a savings.

The opportunity cost of the 1-2 additional minutes required to file a document via EDFP instead of email will equate to \$0.56 - \$1.12 per filing. As an example of estimated costs, inmate tort cases are handled by Assistant Attorneys General from the NCDOJ's Tort Claims Section. The current annual salary for these particular Assistant Attorneys General is \$67,545.¹ Assuming an annual average of 2,000 work hours, the State incurs an average hourly cost of \$33.77 for each Assistant Attorney General, meaning an opportunity cost of \$0.56 per minute.

(3) Costs to private sector filers, including attorneys and pro se plaintiffs.

There are potential costs to the private sector associated with the additional time of uploading via EDFP instead of filing by email, but again, the Commission does not track the method used for filing documents with the Commission other than EDFP. Pro se plaintiffs won't be required to file documents via EDFP and will still be able to utilize any of the filing methods they choose to use now. The Commission has no data regarding how many of the 13,850 tort claim filings that were not filed via EDFP during fiscal year 2017-2018 were also filed by attorneys.

(4) Benefits to the State through the Commission

The proposed rule changes will further improve the efficiency of receiving and processing documents at the Commission. There are numerous benefits that will accrue to the Commission and result in

¹ State Pay Database, *supra* note 8.

customer service improvements to all outside stakeholders. Below is a list of the anticipated improvements to efficiency at the Commission where documents are filed by attorneys in compliance with the new rule:

- Reduced time to upload documents to the electronic claim file of 1-2 minutes per set of documents filed via email or fax, and 5-20 minutes per set of documents filed via U.S. Mail or hand-delivery. With an assumed average total compensation rate of \$26.08 per hour for Commission administrative assistants and a 260-day work year the costs savings would be \$0.44-\$0.86 per emailed filing and \$2.17-\$8.68 per mail or hand-delivered filing. Again, the total number of increased filings via EDFP differentiated by current filing method cannot be estimated.
- The approximately 1-2 minutes spent returning file-stamped copies to U.S. Mail filers will be eliminated, estimated to save \$0.44-\$0.86 per mailing. An automatically-generated document receipt will take the place of file-stamped copies when EDFP is required to be utilized.
- Reduced usage of in-house scanning department due to reduced number of documents filed on paper. This will save on the cost of scan cover sheets, time to complete coversheets and pack documents into boxes for scanning, time and resources for scanning department to scan, and time for the deputy commissioner's section to do quality control before recycling them.
- Costs for recycling and shredding services may also go down if fewer bins are required to be emptied per week.

(5) Benefits to the public and private sector as filers:

The proposed rule changes will have no effect on State tort claimants proceeding without counsel.

The proposed rule changes will benefit the public and private sector (attorneys, paralegals) in several ways. Below is a list of anticipated benefits that will accrue to users of the Commission:

- Filing via EDFP instead of U.S. Mail will save money on mailing costs. Filing via EDFP is free; U.S. Mail charges often exceed \$1.00 and attorney's offices often include copies to be file-stamped and returned in a self-addressed stamped envelope
- This savings will also be a time savings, as it takes approximately 3-4 minutes longer to prepare a mailing than to electronically file documents via EDFP. An average of \$90 per hour is a reasonable estimate of the hourly opportunity cost to firms representing tort

claimants. This would result in a savings of \$4.50-\$6.00 per filing. Public sector administrative staff have an estimated total hourly compensation rate of \$35.71, which would result in time savings of \$1.78-\$2.36 per document filed. It is also noted that 20 minutes spent hand-delivering documents to the Commission is also time saved. It is noted that the Attorney General's office sends a staff person to the Commission once a day. It is unknown whether the courier is always administrative staff. Because it is not known how many documents are filed via hand delivery, U.S. Mail, or email, an estimated annual cost savings cannot be calculated.

- The savings will also be in the cost of paper and printer ink. The Commission will no longer accept paper copies of documents filed with the Commission under the proposed rule.
- Users' customer service experience will improve based on the following:
 - Commission staff will have more time to answer calls and inquiries on substantive matters.
 - Commission staff will be able to process documents more efficiently which will improve turnaround times.

Summary of aggregate impact:

Although specific numbers for costs and savings could not be accurately determined as a whole, it is estimated that the total savings from decreased filing time from hand delivery and U.S. Mail, staff time, and decreased need for paper, etc. will outweigh the initial costs of implementation for the State. The savings to the private sector also outweigh any costs.

APPENDIX 1

Rule 11 NCAC 23B .0104 is proposed for amendment 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</u>	<u>No IC file number has been assigned.</u>	<u>Hand delivery to the Industrial Commission's main office or by</u>

<u>Procedure to extend the Statute of Limitations.</u>		<u>mail to 1236 Mail Service Center, 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.*