

STATE OF TENNESSEE



TENNESSEE CLAIMS COMMISSION

REPRESENTING YOURSELF IN THE CLAIMS COMMISSION

This brochure should be used for information purposes only and is not intended to be a substitute for the advice and assistance of a lawyer. This brochure does not contain legal advice specific to your legal proceeding. None of the statements contained in this brochure should be construed to bind the Claims Commission to any practice described in the brochure.

WHO WILL DECIDE MY CASE?

Once a claim is appealed or transferred to the Claims Commission, it is assigned to one of three Claims Commissioners. Generally, claims are assigned to the Commissioner for the grand division in which the claim arose. The Claims Commission functions essentially like a court and the Claims Commissioners like judges. The defendant to this action, the State of Tennessee, is usually represented by the Tennessee Attorney General's Office, which acts as the State's lawyer.

DO I HAVE TO HAVE A LAWYER TO PURSUE MY CLAIM?

Individuals have the right to represent themselves in the Claims Commission. The legal term for representing yourself is acting "pro se," which means acting "for oneself." Although a lawyer is not required, persons who choose to represent themselves are held to the same standards and rules and may be subject to the same penalties as if they were represented by a lawyer. *Therefore, the decision to represent oneself in the Claims Commission or in any court must be carefully considered.* In addition, while the Clerk's Office or the Commissioner's Office can answer some questions about proceedings before the Commission, personnel in the Clerk's Office or the Commissioner's Office are prohibited from giving you legal advice because they are not trained to do so.

Corporations may not proceed pro se and must be represented by counsel.

WHERE DO I FIND THE RULES AND LAW GOVERNING THE CLAIMS COMMISSION?

Statutes (laws made by the General Assembly) governing the Claims Commission are set out in the *Tennessee Code Annotated*, beginning at § 9-8-301. In addition, the Claims Commission has adopted special rules applicable to the claims pending in the Claims Commission. Both the statutes and the Rules of the Claims Commission are available online at <https://publications.tnsosfiles.com/rules/0310/0310-01-01.pdf> or from the Clerk's Office. In addition, there may be court decisions construing the statutes and rules governing the Claims Commission or pertaining generally to your cause of action, e.g. negligence, workers' compensation, etc. Tennessee case law is contained in Tennessee Decisions, which is available in law libraries and in some public libraries.

The *Tennessee Rules of Evidence* also apply in the Claims Commission. These rules determine the types of evidence that are admissible before the Commission to prove your case. The *Tennessee Rules of Evidence* is contained in the *Tennessee Code Annotated*.

HOW WILL MY CLAIM BE DECIDED?

1. **On Affidavits.** An affidavit is a written statement of facts by a witness that are true to the best of the witness's knowledge and belief. **To be considered by the Commission, an affidavit must be signed and sworn to in the presence of a notary public or other person authorized to administer oaths.** Affidavits should be submitted promptly to be considered by the Commission.

The following types of claims are generally decided by the Commissioner after consideration of affidavits submitted by the parties without a hearing or trial:

a. **Property Loss Claims Filed by Persons in State Custody**

All claims for property loss filed by inmates or other persons in state custody are decided on affidavits without a hearing, except where the Commission determines that witnesses should be heard.

b. **Claims in Which the Claimant Agrees for His Claim to be Assigned to the Small Claim Docket and to Proceed on Affidavits**

Claims with a monetary value of \$25,000 or less where the claimant has not requested the claim be removed to the regular docket and paid the privilege tax (or submitted an oath of poverty demonstrating their inability to pay the privilege tax) are presumed to have waived a hearing and to have agreed to proceed on affidavits.

2. By Hearing or Trial. Hearings in the Claims Commission are similar to non-jury trials held in other courts. Parties have an opportunity to make opening statements, to call and cross-examine witnesses, to present documentary evidence, and to make closing arguments to the Claims Commissioner. The Commissioner then issues written findings of fact and conclusions of law.

The following types of cases are decided after a hearing at which testimony and other evidence is submitted to the Commissioner:

- a. Regular Docket Claims – Claims with a monetary value of more than \$25,000 or those removed to the regular docket.
 - b. Small Docket Claims – Claims with a monetary value of \$25,000 or less.
- 3. On Motion.** In certain circumstances, counsel for the State may seek dismissal of your case prior to a hearing by filing a motion and a memorandum setting out the basis for dismissing the case. The State’s motion may be granted and your claim may be dismissed without further notice if you do not comply with the *Tennessee Rules of Civil Procedure* by responding to the motion. Generally, in response to the State’s motion, the papers you file must show that (1) you disagree with the State’s version of the facts; (2) you have evidence contradicting the State’s version; and (3) the evidence you rely on would be sufficient to support a judgment in your favor.

In some circumstances to make this showing, you may be required to file one or more affidavits disputing the State’s version of the facts. In addition to affidavits, you may also submit other evidence that supports your claim.

If you fail to submit countervailing evidence in response to evidence submitted by the State, your claim may be dismissed without further notice. Therefore, it is very important that you read the State’s motion, memorandum of law, affidavits, and other evidentiary materials to see if you agree or disagree with the State’s version of the relevant facts. It is also very important that you review *Tennessee Rules of Civil Procedure* carefully. These rules provide detailed instructions concerning the papers you must file in opposition to the defendant’s motion. If you fail to follow these instructions, the State’s motion may be granted.

HOW DO I SCHEDULE A HEARING/TRIAL?

Each Commissioner sets their docket. You should contact the Commissioner’s office in the division in which your claim has been assigned when your case is ready to be set. It is your responsibility to request that your case be set for a hearing. You may contact the Commissioner assigned to your case at the address provided below.

WHAT MUST I PROVE AT TRIAL?

At trial, you will have the burden of proving your claim by a preponderance of the evidence, as well as the burden of proving the amount of damages.

HOW DO I OBTAIN SUBPOENAS FOR WITNESSES?

Subpoenas may be obtained from the Clerk's office. The following information is needed: 1. Claimant's Name; 2. Division to which the claim has been assigned; 3. Claim number; 4. Number of subpoenas required. Subpoenas are issued blank. The attorney/claimant may serve the subpoena or have the sheriff's department serve them. **The Clerk does not serve subpoenas.** If a subpoena is not for the hearing in the matter, it may be necessary to modify the text.

WHAT HAPPENS IF I DO NOT ACTIVELY PURSUE MY CLAIM?

Pursuant to Tennessee Code Annotated § 9-8-402(b), unless written consent has been given by the Commissioner, it is **mandatory** that any claim filed with the Claims Commission upon which no action is taken by the claimant to advance the case to disposition **within any one year period of time** be **dismissed** with prejudice.

CAN I WRITE OR SPEAK WITH THE COMMISSIONER DIRECTLY CONCERNING MY CLAIM?

Because it operates like a court, most communication with the Commissioner should be in writing, filed with the Clerk's office, and copies sent to the Commissioner and to the State's counsel. Telephone conferences with the Commissioner may be requested to discuss procedure or specific issues. The State's counsel **must** be included in such conversations.

DO I HAVE THE RIGHT TO APPEAL MY CLAIM?

Regular docket claims are appealable to the Tennessee Court of Appeals. There is no appeal from cases on the small docket. Prior to a hearing, however, small docket cases may be transferred to the regular docket at the request of either party.

In addition, at the request of two Commissioners, the Commission can sit *en banc* (as a group) to decide any matter in which there is a disagreement among two Commissioners.

WHAT IF I DECIDE NOT TO PURSUE MY CLAIM?

Rule 41.01 of the *Tennessee Rules of Civil Procedure* provides that, except when a motion for summary judgment by an adverse party is pending, a plaintiff has the

right to seek dismissal of his action at any time before the trial. If a motion for summary judgment is pending, dismissal must be agreed to by both parties.

CONTACT INFORMATION:

Western Division

James A. Hamilton, III
Commissioner Western Division
P.O. Box 1170
Dyersburg, TN 38025-1170

Middle Division

James A. Haltom
Commissioner Middle Division
P.O. Box 190673
Nashville, TN 37219

Eastern Division

William A. Young
Commissioner East Division
7610 Gleason Dr., Ste. 201
Knoxville, TN 37919-6816

CLERK:

Paula Merrifield, Clerk
Tennessee Claims Commission
Andrew Jackson Building, 13th Floor
502 Deaderick Street
Nashville, Tennessee 37243-0207

****ATTORNEY GENERAL****

(Name of the Assigned Assistant Attorney General)
Office of the Attorney General
P. O. Box 20207
Nashville, Tennessee 37202-0207

****The name of the attorney representing the State of TN is assigned by the Attorney General's office and should be included on all correspondence and pleadings.****