**Section 3500.350 Waiver of Convicted Person's Procedural Safeguards and Privileges**

a) If the Director determines that the Claim Form satisfies the requirements of the initial screening, the Director, or the Director's designee, will obtain a properly signed and witnessed Waiver Form (see 20 Ill. Adm. Code 2000.Appendix C) from the convicted person before proceeding further.

b) The *convicted person* must sign *a* written waiver in *which the convicted person waives his or her procedural safeguards and privileges, including but not limited to the right against self-incrimination under the United States Constitution and the Constitution of the State of Illinois,* only as those safeguards and privileges pertain to the offense for which the person was convicted and with respect to which the person is claiming torture. The convicted person must also agree *to cooperate fully with the Commission and agree to provide full disclosure regarding the* torture *inquiry.* *The waiver does not apply to matters unrelated to a convicted person's claim of torture.* [775 ILCS 40/40(b)]

c) *The convicted person has the right to advice of counsel* before *the execution of the* waiver and, *if a formal inquiry is* initiated, *throughout the* duration of the *formal inquiry. If counsel represents the convicted person, the convicted person's counsel must be present at the signing of the* waiver. [775 ILCS 40/40]

d) *If the convicted person is not represented by counsel, the Commission Chair shall determine if the person is indigent and, if so, enter an order providing for the appointment of counsel for the purpose of advising on the* waiver and representing the convicted person at any waiver or interview session with the Commission. [775 ILCS 40/40] Appointment may be of a volunteer attorney acting in a pro bono capacity or paid for by TIRC. The determination of indigency shall be made by having the convicted person complete and send to the Director an Application for Appointed Counsel Based Upon Indigency contained in 20 Ill. Adm. Code 2000.Appendix G. The Director shall furnish an Application to the convicted person upon request. The Director shall forward a properly completed Application to the Chair for purpose of making the decision regarding indigency.

e) Appointment of counsel for the claimant shall be only for the purpose of advising the claimant on any Waiver Forms and representing the claimant during any initial waiver/interview sessions necessary to secure the Waiver Form and initially interview the claimant, as well as for any necessary subsequent communication directly relating to the initial waiver/interview session. However, it is permissible for the appointed counsel to continue, at the counsel's discretion, to represent the claimant for TIRC and other purposes on an unappointed basis.

f) If the convicted person refuses to sign the Waiver Form, the Director shall recommend to the Commission that the claim of torture be dismissed. The Commission shall vote to accept or reject the Director's recommendation by majority vote of the voting members appointed. At least 4 votes are required to accept a recommendation to dismiss a claim.

g) If the Director determines that the Waiver Form has been properly signed and witnessed, the claim shall proceed to Informal Inquiry under Section 3500.360.

h) If a claimant is represented by counsel, contact with the claimant by the Commission shall be governed by Illinois Rule of Professional Conduct 4.2 (Rules of the Illinois Supreme Court, Article VIII). If, after a claimant has signed the Waiver Form, it becomes necessary to re-interview an unrepresented, indigent claimant about substantive factual matters or to obtain additional waivers, counsel for an indigent claimant shall again be appointed for that purpose. Additional contact between the unrepresented, indigent claimant and the Commission about clerical or insubstantial matters may be conducted without reappointing counsel.

(Source: Amended at 45 Ill. Reg. 14203, effective October 27, 2021)