

**RULES REVIEW COMMISSION MEETING
MINUTES
March 20, 2014**

The Rules Review Commission met on Thursday, March 20, 2014, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jay Hemphill, Stephanie Simpson, and Ralph Walker.

Staff members present were: Commission counsels Joe DeLuca, Abigail Hammond, Amber Cronk May and Amanda Reeder; and Julie Brincefield, Tammara Chalmers, Dana Vojtko and Lindsay Woy.

The meeting was called to order at 10:03 a.m. with Chairman Currin presiding. She read the notice required by NCGS 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts. She also announced that for the first time the Commission was broadcasting meeting audio of the monthly RRC meeting.

Chairman Currin introduced new Commission counsel Amber Cronk May and new editorial assistant Lindsay Woy.

APPROVAL OF MINUTES

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the February 20, 2014 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

NC Rural Electrification Authority

04 NCAC 08 .0101, .0109 – The agency has not responded in accordance with G.S. 150B-21.12(b). There was no action for the Commission to take at the meeting.

04 NCAC 08 .0313 – The Commission reviewed the Rule, which was proposed by the agency to respond to the Commission's February 2014 objection to Rule 08 .0109, Item (6), as the Commission found the agency had no statutory authority to set the process for arbitration outside of rulemaking. The proposed rule will set this process. Pursuant to G.S. 150B-21.12(c), the Commission found that the submission was responsive to the Commission's objection. The Commission also found that the changes were substantial, creating an effect that could not have reasonably been foreseen from the text of Rule 08 .0109 as published in the Register. The Commission authorized the proposed changes to be published pursuant to G.S. 150B-21.1(a3) and will review the rules again for approval after publication.

Lareena Phillips with the NC DOJ, agency counsel, addressed the Commission.

Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

10A NCAC 27G .0504 – The rule was withdrawn at the request of the agency, in accordance with G.S. 150B-21.12(d). Counsel informed the Commission that notice would be sent to the Governor in accordance with the statute.

Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

10A NCAC 27G .6702; 27H .0201, .0202, .0203, .0204, .0205, .0206, .0207 – The rules were withdrawn at the request of the agency in accordance with G.S. 150B-21.1(b2).

Denise Baker from the agency addressed the Commission.

State Board of Education

16 NCAC 06C .0701 – The agency has not responded in accordance with G.S. 150B-21.1(b1) or (b2). There was no action for the Commission to take at the meeting.

Cemetery Commission

21 NCAC 07A .0101, .0103, .0104, .0106, .0201, .0202, .0203, .0204, .0205; 07B .0103, .0104, .0105; 07C .0103, .0104, .0105; 07D .0101, .0102, .0104, .0105, .0201, .0202, .0203. The agency has not responded in accordance with G.S. 150B-21.12(b). There was no action for the Commission to take at the meeting.

Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors

The Commission unanimously approved the rewritten version of Rule 21 NCAC .0301.

State Human Resources Commission

Delores Joyner addressed the Commission.

25 NCAC 01B .0350, .0413, .0414, .0429, .0430; 01C .0311, .0403, .0404, .0411, .0412; 01D .0201; 01E .0901; 01H .0901, .0902, .0904, .0905, .1001, .1003, .1004, .1005; 01I .2002; 01J .0603, .0610, .0615, .0616, .1101, .1201, .1202, .1203, .1204, .1205, .1206, .1207, .1208, .1301, .1302, .1304, .1305, .1306, .1307, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1321, .1322, .1401, .1402, .1403, .1404, .1405, .1406, .1407, .1408, .1409, .1410, .1411, .1412 – The agency has not responded with any rewritten temporary rules. The agency, in a letter from its attorney Valerie Bateman, said that it anticipates addressing these rules along with the next rule, 01J .1310, at its April meeting, the same day as the RRC meeting and anticipates submitting rewritten rules in time for review at the Commission's May 2015 meeting. For the record, Ms. Bateman's letter reflected May of 2017. There was no action for the Commission to take at the meeting.

State Human Resources Commission

25 NCAC 01J .1310 – The agency has not responded. There was no action for the Commission to take at the meeting, but responded in the same manner as set out above concerning their other temporary rules.

Building Code Council

2015 NC Existing Building Code – The agency has not responded. The agency anticipates submitting revised rules to address the technical change requests and Commission counsel's other concerns. There was no action for the Commission to take at the meeting.

LOG OF FILINGS**Commission for Public Health**

All rules were approved unanimously.

State Board of Education

Both rules were approved unanimously.

Licensing Board for General Contractors

Prior to the review of the rules from the Licensing Board for General Contractors, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because she is the rulemaking coordinator for the board.

All rules were approved unanimously.

Board of Dental Examiners

Prior to the review of the rules from the Licensing Board for Dental Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because her law firm provides ongoing legal representation for the board.

The two amendments and two repeals were approved unanimously.

Hearing Aid Dealers and Fitters Board

All rules were approved unanimously.

On-Site Wastewater Contractors and Inspectors Certification Board

Prior to the review of the rules from the On-Site Wastewater Contractors and Inspectors Certification Board Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because her law firm provides ongoing legal representation for the board

The two rules were approved unanimously.

Office of Administrative Hearings

26 NCAC 03 .0401 was approved unanimously.

Industrial Commission

The Commission approved all rules unanimously except for Rule 10A .0701, with Commissioner Simpson dissenting. In addition, the Commission objected to Rules 04 NCAC 10A .0601, 10A .0609A, 10E .0103 and 10E .0104.

The Commission objected to Rule 04 NCAC 10A .0601, finding the deletion of the language in Paragraph (a) relating to the reasonable sanctions not prohibiting the employer or the carrier from contesting compensability and liability for the claim creates ambiguity by appearing to abrogate statutory requirements. Commissioner Doran dissented from the majority vote.

The Commission unanimously objected to Rule 04 NCAC 10A .0609A, finding the Industrial Commission lacks authority in Paragraph (h) of the Rule to set a specific timeframe for depositions and transcripts of the same without allowing the Deputy Commissioners to reduce or enlarge that period of time, as set forth in G.S. 97-25(g).

The Commission unanimously objected to Rule 04 NCAC 10E .0103 based upon ambiguity. The rule language was unclear what actions the Industrial Commission would take after receiving an application for *pro hac vice* admission.

The Commission unanimously objected to Rule 04 NCAC 10E .0104 based upon ambiguity. The Commission found that the rule language as submitted was unclear regarding the process for attorneys to request and take secured leave.

Speakers addressed the Commission on several rules. Meredith Henderson, Andrew Heath and Wanda Taylor with the agency addressed the Commission. Julia Dixon, Hank Patterson and Victor Farah also addressed the Commission about these rules.

The Commission received ten letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review, for the following approved rules:

1. 04 NCAC 10A .0605
2. 04 NCAC 10A .0701

3. 04 NCAC 10C .0109
4. 04 NCAC 10E .0203
5. 04 NCAC 10L .0101
6. 04 NCAC 10L .0102; and
7. 04 NCAC 10L .0103

The Commission recessed for lunch at 1:30 and reconvened 2 p.m.

TEMPORARY RULES

Environmental Management Commission

Commissioner Walker was not present during the discussion or vote for this rule.

15A NCAC 02H .1002 was approved unanimously.

COMMISSION BUSINESS

The Commission considered proposed Rules 26 NCAC 05 .0105, .0106, and .0201 - .0211. After consideration and discussion of the comments and the recommended changes of Commission Counsel, the Commission adopted the proposed rules.

The meeting adjourned at 3:03 p.m.

The next regularly scheduled meeting of the Commission is Thursday, April 17th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Julie Brincefield
Administrative Assistant

Minutes approved by the Rules Review Commission:

Margaret Currin, Chair

Rules Review Commission
 Meeting
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MARCH 20, 2014

Name	Agency
Meredith Henderson	Industrial Commission
Linda Cheatham	"Please Print Legibly"
Julie Ventatono	DENR
Connie Stephens	NCEWCECB
Pamela Young	NCIC
MART SELPH	NCLBGC
Jack Hulse	APN
Dwain	SOB
Gene Camarano	Fork & Can
Julia Dixon	Young Modic Henderson
Neil Martin	SBE
Jason Wain	SBE
Wanda Taylor	NCIC
Mike Carpenter	NCWBA
Janice Davidson	DOR
Lutie Cornetto	NCSBE
Denise Baker	DMIT/BA/SAC
Jennifer Everett	NCDENR
Carolyn Guthrie	NCDPI
Robert Jockey	NCDENR
Deleese Jaynes	Office of State Human Resources

Rules Review Commission
 Meeting
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MARCH 20, 2014

Name	Agency
Please Print Legibly <i>Lead County</i>	Please Print Legibly <i>Young Men</i>
Please Print Legibly <i>Tom Harris</i>	Please Print Legibly <i>SBANC</i>
Please Print Legibly <i>Bradley Bennett</i>	Please Print Legibly <i>DENR</i>
Please Print Legibly <i>Andrew Heard</i>	Please Print Legibly <i>NCIC</i>
Please Print Legibly <i>Sumit Gupta</i>	Please Print Legibly <i>NCIC</i>
Please Print Legibly <i>Ryan Boyce</i>	Please Print Legibly <i>NCIC</i>
Please Print Legibly <i>Bernadine Ballance</i>	Please Print Legibly <i>NCIC</i>
Please Print Legibly <i>Catherine Jorgensen</i>	Please Print Legibly <i>HADFBS</i>
Please Print Legibly <i>Christina Simpson</i>	Please Print Legibly <i>P</i>
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